

**EXH. GA-13C
DOCKETS UE-240004/UG-240005
2024 PSE GENERAL RATE CASE
WITNESS: GILBERT ARCHULETA**

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

**Docket UE-240004
Docket UG-240005**

**TWELFTH EXHIBIT (CONFIDENTIAL) TO THE
PREFILED DIRECT TESTIMONY OF**

GILBERT ARCHULETA

ON BEHALF OF PUGET SOUND ENERGY

REDACTED VERSION

FEBRUARY 15, 2024

DEMAND RESPONSE AGREEMENT

BETWEEN

PUGET SOUND ENERGY, INC.

AND

ENEL X NORTH AMERICA, INC.

DATED: September 26, 2023

**DEMAND RESPONSE AGREEMENT
PSE Agreement No. CW2276207**

This DEMAND RESPONSE AGREEMENT, dated as of September 26, 2023 (“Execution Date”), is entered into by and between:

- (1) Puget Sound Energy, Inc. (“PSE”); and
- (2) Enel X North America, Inc., a Delaware corporation, located at **101 Seaport Boulevard, Boston, Massachusetts 02210** (“Seller”).

PSE and Seller are sometimes referred to herein individually as “Party” and collectively as “Parties.”

RECITALS

WHEREAS, PSE received approval from the Washington Utilities and Transportation Commission (“WUTC”) in Order 01 issued in Docket UE-210878 on January 27, 2022 to issue a request for proposals for the supply of distributed energy resources, including demand response, in order to fulfill Clean Energy Transformation Act (“CETA”) compliance requirements and in accordance with Order 05 issued in Docket UE-200413 on March 25, 2021 (the “2022 DER RFP”);

WHEREAS, PSE issued the 2022 DER RFP on February 7, 2022 to bidders;

WHEREAS, Seller submitted a demand response proposal in response to the 2022 DER RFP;

WHEREAS, Seller operates a *Commercial and Industrial Demand Response Program* (“the Program”), which provides energy resources to PSE through a portfolio of demand response products (each a “Product” and together, the “Product Portfolio”) to help balance electric supply and demand.

WHEREAS, the specific Products within the Product Portfolio will be set forth within Attachments executed between the Parties pursuant to, and subject to the terms and conditions of, this Agreement (each, a “Product Attachment”) set forth at the end of this Agreement; and

WHEREAS, PSE and Seller desire to enter into an agreement in connection with the 2022 DER RFP whereby PSE will purchase from Seller, and Seller will provide, reductions in electrical energy load pursuant to the operation of each Product within the Program in PSE’s service territory, as set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, **THE PARTIES AGREE** as follows:

ARTICLE 1. DEFINITIONS

1.1 Definitions.

The terms set forth below, when used in this Agreement, shall have the meanings set forth below. The capitalized terms listed in this Article shall have the meanings set forth herein whenever the terms appear in this Agreement, whether in the singular or the plural or in the present or past tense.

“Actual Load Reduction” means, for each Settlement Interval during a Product Event, as described in each Product Attachment, the amount in MW by which the aggregate electric energy usage of all Participating Facilities for such Product for such Settlement Interval differs from the Baseline Energy Usage applicable to such Settlement Interval, which may be a positive or negative number.

“Agreement” means this Demand Response Agreement and the Attachments, Exhibits, Schedules and Appendices hereto, which are hereby incorporated herein by reference, as the same may be amended, modified or supplemented from time to time.

“Applicable Laws” has the meaning ascribed to it in Section 15.1.

“Baseline Energy Usage” means, for each Settlement Interval of a Product Event, the sum of Facility Baseline Usages for all Participating Facilities of a given Product.

“Business Day” means Mondays through Fridays, excluding Holidays.

“Capacity Delivery Month” means a calendar month within the Program Year.

“Capacity Shortfall Amounts” has the meaning ascribed to it in Section 8.2.

“Claims and Losses” has the meaning ascribed to it in Section 14.1.

“Clean Energy Transformation Act” means Chapter 19.405 RCW.

“Committed Capacity Shortfall” has the meaning ascribed to it in Section 8.2.

“Committed Capacity Shortfall Amount” has the meaning ascribed to it in Section 8.2.

“Committed Load Reduction” means, for every clock hour in each Capacity Delivery Month, the amount, in megawatts (“MW”), of load reduction that Seller commits to make available to PSE for each Product and in aggregate across all Products in the Product Portfolio, in accordance with the requirements of Section 8.1 and each Product Attachment.

“Confidential Information” has the meaning ascribed to it in Section 18.5.1.

“Customer Benefits Plan” has the meaning ascribed to it in Section 18.14.6.

“Customer Consent to Disclosure” means an instrument, in the form of Exhibit D attached hereto, under which the PSE customer named therein consents to its electric energy usage data being shared with Seller.

“Customer Service Metrics” has the meaning ascribed to it in Section 8.3.

“Data Pulse Equipment” means a single pulse initiator providing a Form C contact closure (KYZ) and any equipment or appurtenances, including a load profile card, a KYZ pulse initiator, junction boxes, fuses and terminal strips.

“Demand Response Software” means Seller’s web-based interface capable of providing near real-time energy profiling and Product Event dispatch management, as further described in Section 7.3.1.

“Dispatch Event” means an event dispatched by PSE whereby Seller is called upon to reduce electric energy usage at one or more Participating Facilities.

“Event of Default” has the meaning ascribed to it in Section 10.3.

“Facility Baseline Usage” has the meaning ascribed to it in each Product Attachment.

“Final Monthly Invoice” has the meaning ascribed to it in Section 9.1.

“Fitch” means Fitch Ratings, Inc. and any successor thereto

“Force Majeure Event” means any event or circumstance which wholly or partly prevents or delays the performance of any obligation arising under this Agreement, but only if and to the extent (i) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (ii) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under this Agreement and which by the exercise of reasonable diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (iii) such event is not the direct or indirect result of the negligence or the failure of, or caused by, the Party seeking to have its performance obligations excused thereby.

(a) Subject to the satisfaction of the foregoing requirements, events that could qualify as Force Majeure include, but are not limited to, the following:

(i) acts of God or the public enemy, war, whether declared or not, blockade, insurrection, riot, civil disturbance, public disorders, rebellion, violent demonstrations, revolution, sabotage or terrorist action;

(ii) any effect of unusually severe natural elements, such as fire, subsidence, earthquakes, floods, tornadoes, storms, lightning, or similar cataclysmic occurrence or other unusual natural calamities;

- (iii) except as set forth in sub-section (b)(vi) below, strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable);
 - (iv) explosion or accident;
 - (v) governmental action or inaction;
 - (vi) impacts associated with any pandemic or epidemic (including COVID-19), but only if the prevention or hindrance of the affected Party's ability to perform its obligations under this Agreement is a result of (A) work not being exempt from any restrictions on work imposed by a governmental authority or any other order, rule, regulation or action or delays by any governmental authorities, including permitting delays, not in effect and/or applicable to the Project as of the Effective Date and (B) the affected Party being unable to employ additional commercially reasonable safeguards or other procedures necessary to protect the reasonable safety of its personnel while performing work, and
 - (vii) any network or internet failure by reason of a computer virus or cyberattack.
- (b) Force Majeure shall not be based on:
- (i) economic conditions that render a Party's performance of this Agreement unprofitable or otherwise uneconomic;
 - (ii) PSE's inability to economically to use or resell products and/or services purchased under this Agreement;
 - (iii) Seller's inability to provide the products and/or services required under this Agreement economically notwithstanding the existence of this Agreement;
 - (iv) Seller's ability to sell the products and/or services required under this Agreement at a price greater than the price set forth in this Agreement;
 - (v) Seller's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by PSE pursuant to this Agreement;
 - (vi) a strike, work stoppage or labor dispute arising out of or limited only to any one or more of Seller, Seller's affiliates, or any other third party employed by Seller;

(vii) a Party's inability to pay amounts due to the other Party under this Agreement, except if such inability is caused solely by a Force Majeure event that disables physical or electronic facilities necessary to transfer funds to the payee Party; or

(viii) any breakdown, degradation or malfunction of equipment installed, operated, maintained, and/or used by Seller to perform its obligations under this Agreement (including any serial equipment defect) that is not directly caused by an independent event of Force Majeure.

"Good Industry Practice" means (a) any of the practices, methods, and acts that when engaged in are commonly used in prudent electric utility engineering and operations during the relevant time period to operate and maintain electric equipment lawfully and with safety, reliability, efficiency, and expedition; or (b) if no such practices, methods, and acts exist, then those practices, methods, and acts that, in the exercise of reasonable judgment considering the facts known when engaged in, could have been expected to achieve the desired result consistent with Applicable Law, safety, reliability, efficiency, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods, or acts. With respect to each Participating Facility, Good Industry Practice(s) includes taking reasonable steps to ensure that:

- (1) equipment, materials, resources, and supplies, including spare parts inventories, are available by Seller to meet the Participating Facilities' needs;
- (2) Seller has sufficient operating personnel available at all times and is adequately experienced and trained and licensed as necessary to operate the Seller Equipment properly, efficiently, and in coordination with PSE and is capable of responding to reasonably foreseeable Emergency Conditions;
- (3) preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable long term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;
- (4) appropriate physical, computer, network, and internet security measures are implemented to protect the Seller Equipment and Seller's ability to communicate with PSE;
- (5) appropriate monitoring and testing are performed to ensure Seller Equipment is functioning as designed;
- (6) Seller Equipment is not operated in a negligent manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public, or PSE's distribution grid or contrary to Applicable Laws or without regard to defined limitations; and

(7) Seller Equipment will function properly at the Participating Facilities.

“Holidays” means any day recognized as a holiday by the North American Electric Reliability Corporation.

“Initial Monthly Invoice” has the meaning ascribed to it in Section 9.1.

“Interval Meter” has the meaning ascribed to it in Section 3.1(a).

“Late Payment Rate” means the lesser of (i) the rate per annum equal to the “Monthly” Federal Funds Rate (as reset on a monthly basis based on the latest month for which such rate is available) as reported in Federal Reserve Bank Publication H.15-519, or its successor publication, or (ii) the maximum interest rate permitted under Applicable Laws.

“Letter of Credit” means a letter of credit provided issued a U.S. state or federally chartered commercial bank (or U.S. branch of a foreign commercial bank) that has (i) assets of at least \$10,000,000,000 and (ii) senior unsecured long-term debt or deposits that, at the time when the letter of credit is delivered, are rated at least “A-” (or its current equivalent) by S&P or Fitch and at least “A3” (or its then current equivalent) by Moody’s, in a form reasonably acceptable to PSE (it being agreed that the form of letter of credit attached as Exhibit G hereto is acceptable to PSE) and must provide, among other things, that the beneficiary of such letter of credit is entitled to draw the full amount of such letter of credit if: (i) the letter of credit has not been renewed or replaced within thirty (30) days prior to the expiration date of the letter of credit; or (ii) the issuer of the letter of credit is no longer meets clauses (i) and (ii) above and Seller has failed, within fifteen (15) Business Days after receipt of written notice thereof by PSE to replace such letter of credit with another letter of credit issued meeting the requirements above, in a form acceptable to Purchaser, or other replacement acceptable to PSE in PSE’s sole discretion.

“Load Reduction Performance Factor” means for a particular Product in a particular Capacity Delivery Month, the summation of the Actual Load Reduction during all Settlement Intervals in such Capacity Delivery Month divided by the summation of the Committed Load Reduction (MW) in effect for such Product during such Settlement Intervals.

“Marketing Materials” has the meaning ascribed to it in Section 6.1.

“Megawatt” means 1,000,000 watts, rounded to the nearest watt.

“Meter Installation Contract” has the meaning ascribed to it in Section 7.2.1.

“Metering Devices” means all PSE-owned meters, metering equipment and data processing equipment used to measure, record or transmit data relating to the electric energy usage at a Participating Facility.

“Monthly Capacity Payment” has the meaning ascribed to it in section 6 of each Product Attachment and further described in relation to invoicing in Article 9.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Notice to Add Participating Facility” has the meaning ascribed to it in Section 3.1.

“Notice to Remove Participating Facility” has the meaning ascribed to it in Section 3.1.

“Participating Customer” means the customer named on PSE’s account for a Participating Facility.

“Participating Customer Contract” means a contract between Seller and Participating Customer, governing Participating Customer’s participation in the Program.

“Participating Facility” means an Eligible Facility participating in the Program pursuant to a Product Attachment.

“Party Representative” has the meaning ascribed to it in Section 11.2.

“Product Event” means, with respect to a Product, any Dispatch Event for such Product during Product Hours .

“Program” has the meaning set forth in the Recitals in this Agreement.

“Program Day” means any calendar day during the Program Year.

“Program Year” means November 1st through October 31st of each year of the Term.

“Project Performance Standards” means all formulae and methodologies used to measure load reductions delivered under this Agreement for, but not limited to, the purpose of calculating any payments made by PSE to Seller hereunder, as described in Article 8 hereof.

“PSE Information” means (a) any project, design, roadmap, and architecture plans of PSE; (b) any personally identifiable information about persons or entities that Seller obtains from PSE or any source on behalf of PSE, whether disclosed orally or accessed in written, electronic, or other form or media in connection with the Agreement, which concerns prospective and existing customers or employees of PSE, or any third party PSE has a business relationship with, including names, addresses, telephone numbers, e-mail addresses, social security numbers, credit card numbers, call-detail information, purchase information, product and service usage information, account information, credit information and demographic information; and (c) any aggregate data created or derived from the previously described personally identifiable information.

“PSE Event of Default” has the meaning ascribed to it in Section 10.2.

“Receiving Party Representatives” has the meaning ascribed to it in Section 18.5.2.

“Reputational Event” has the meaning ascribed to it in Section 12.3.2.

“S&P” means S&P Global Market Intelligence, a division of S&P Global, Inc., and any successor thereto.

“Seller Equipment” has the meaning ascribed to it in Section 7.1.1.

“Seller Event of Default” has the meaning ascribed to it in Section 10.1.

“Settlement Interval” has the meaning ascribe to it in each Product Attachment.

“Target Committed Load Reduction” has the meaning ascribed to it in Section 8.1.2.

“Termination Costs” has the meaning ascribed to it in Section 10.3.2.

“Termination Fee” has the meaning ascribed to it in Section 10.4(b).

“Termination Gains” has the meaning ascribed to it in Section 10.3.2.

“Termination Losses” has the meaning ascribed to it in Section 10.3.2.

“Termination Payment” has the meaning ascribed to it in Section 10.3.2.

1.2 Interpretation.

In this Agreement, unless otherwise stated:

1.2.1. Any references to:

- (a) any Article, Section, Schedule, Appendix, Exhibit or other provision thereof, shall be construed, at any particular time, as including a reference to the Article, Section, Schedule, Appendix, Exhibit or the relevant provision thereof as it may have been amended, modified or supplemented;
- (b) any Party or authority entity in this Agreement includes that Party’s successors and permitted assigns or, in the case of any governmental authority, any governmental authority succeeding to its functions and capacities;
- (c) a month shall be construed as a reference to a calendar month; and
- (d) a particular Section, Schedule, Exhibit or Appendix shall be a reference to the relevant Section, Schedule, Exhibit or Appendix in or to this Agreement.

1.2.2. Words in the singular may be interpreted as referring to the plural and vice versa, and words denoting natural persons may be interpreted as referring to corporations and any other legal entities and vice versa.

1.2.3. Whenever this Agreement refers to a number of days, such number shall refer to the number of calendar days unless Business Days are specified. A requirement that a

payment be made or an act be performed on a day that is not a Business Day shall be construed as a requirement that the payment be made or act performed on the next following Business Day.

- 1.2.4. The words “include” and “including” are to be construed as being at all times followed by the words “without limitation.”
- 1.2.5. Words not otherwise defined herein that have well-known and generally acceptable technical or trade meanings are used herein in accordance with such well-recognized meanings.
- 1.2.6. In the event of a conflict between the terms of any Schedule or Exhibit and the terms in the body of this Agreement, the terms in the body of this Agreement shall take precedence.

ARTICLE 2. TERM

2.1 Initial Term.

The initial term of this Agreement (the “Initial Term”) will commence on the Execution Date and, unless sooner terminated under this Agreement, shall remain in full force and effect through May 31st, 2029.

ARTICLE 3. SELLER COVENANTS

3.1 Seller Covenants.

- (a) In addition to at all times complying with the requirements of Section 18.5, Seller shall not:
 - (i) Collect, access, use, maintain, or disclose any information provided by PSE under or in connection with this Agreement, including any PSE Information or PSE load or pricing forecasts, financial, technical, or other information, except for the purposes of carrying out this Agreement;
 - (ii) Sell or otherwise provide any PSE Information to any affiliate or third party, except (A) as required in connection with this Agreement, (B) as required by Applicable Laws, or (C) to employees of Enel North America, Inc. to the extent such persons are engaged in supporting Seller’s performance of this Agreement; or
 - (iii) Offer or sell any capacity, energy, demand response, ancillary services, or any electric product sourced from a Participating Facility of any Participating Customer or aggregated under this Agreement to any affiliate or third party.

ARTICLE 4. RESERVED

ARTICLE 5. RESERVED

ARTICLE 6. MARKETING, RECRUITMENT AND RETENTION

6.1 Co-Branding and Customer Interaction.

In connection with all activities undertaken in performance of this Agreement, Seller will comply with PSE's vendor requirements and policies set forth in this Agreement, including Exhibit C, as such vendor requirements and policies may be updated by mutual agreement of the Parties from time to time.

6.2 Marketing Plan and Marketing Materials.

Seller shall conduct the marketing, recruitment, and retention activities ("Marketing Activities") required, unless otherwise specified, to market to, recruit Eligible Facilities, and retain Participating Facilities as described in Exhibit C. Seller shall not, without the prior approval of PSE, which approval may be withheld in PSE's sole discretion, (a) use the name, trademark, or logo of PSE on any advertising, marketing, promotional or other materials (printed copy or electronic) (provided that PSE's name will be used in the Participating Customer Agreement), (b) state, imply or in any way represent to third parties, including existing or potential Participating Customers, that PSE has endorsed, sponsored, or approved, or is affiliated with, Seller; or (c) distribute, publish, disseminate or use any marketing or other plans and materials that specifically reference PSE ("PSE Marketing Materials"). If Seller wishes to distribute, publish, or disseminate any PSE Marketing Materials, Seller must deliver the proposed Marketing Materials to PSE for review and approval. All Marketing Activities conducted by Seller in connection with the Program will comply with all Applicable Laws. Nothing in this Section shall prohibit Seller from sending routine business communications to, or conducting meetings with, potential Participating Customers, subject to Seller's compliance with the foregoing provisions of this Section 6.1 and other applicable provisions of this Agreement, provided that any such communications or meetings will be solely for the purpose of performing under this Agreement and not in any way detrimental to PSE or for Seller's benefit (or its affiliates or other customers) other than as permitted under this Agreement.

6.3 Training.

Seller shall, at Seller's sole cost and expense, provide up to 20 hours of in-person training (exclusive of any time required to prepare materials for such in-person training) per Program Year to PSE and its employees in matters related to the implementation of this Agreement, including the dispatch of Product Events, for the purpose of educating PSE's support staff, account representatives, and other employees in any customer relations role. For the avoidance of doubt, instances of engagement between Seller personnel and PSE personnel such as Key Account Managers, with regard to targeting, recruiting, and retaining PSE

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customers for purposes relating to participation in this Program will not be considered Training.

6.4 Press Release.

Neither Party shall issue a press release or other public statement regarding this Agreement nor the transactions contemplated hereby without the prior approval of the other Party, except to the extent required by Applicable Laws or in accordance with the requirements of any recognized stock exchange. If either Party is contacted by any media concerning this Agreement, its performance, or the Program, the contacted Party shall inform the other Party of the contact and the Parties will coordinate on any response. For the avoidance of doubt, Seller will not communicate with any media without the prior approval of PSE.

**ARTICLE 7. EQUIPMENT INSTALLATION, MAINTENANCE AND SOFTWARE;
OPERATIONAL REQUIREMENTS**

7.1 Seller Equipment.

7.1.1. Installation.

Seller shall be responsible for constructing and installing at Seller's sole cost and expense, all Program equipment and software (other than Metering Devices and Data Pulse Equipment installed by PSE), and upgrades thereto, necessary to (i) monitor each Participating Facility's electric energy usage, (ii) communicate with the Participating Customers, and (iii) control each Participating Facility's electric energy usage so as to enable Seller to achieve the Committed Load Reduction (collectively, "Seller Equipment"). Seller shall construct and install all Seller Equipment in a good and workmanlike manner and in accordance with Good Industry Practice.

7.1.2. Operation and Maintenance.

Seller shall be responsible, at its sole cost and expense, for all operation, maintenance, replacement, and repair of Seller Equipment in accordance with Good Industry Practice. Seller shall cause all maintenance to be performed on a basis that ensures reliable long-term and safe operation, and performed by knowledgeable, trained and experienced personnel utilizing proper equipment and tools. Seller will use its best efforts to perform all repair work at the earliest opportunity during its normal work schedule (but in any event, no later than ten (10) calendar days after being contacted by a Participating Customer or PSE).

7.1.3. Permits, Licenses; Real Property Rights.

Seller shall be responsible for obtaining, at its sole cost and expense, all governmental approvals and permits, third party licenses or consents, and real property rights necessary for Seller to install, construct, operate, replace, repair, maintain and remove all Seller Equipment for the duration of the Initial Term of this Agreement.

7.1.4. Disablement and Removal.

Seller will remotely disable and make dormant Seller Equipment at a Participating Facility at the earlier of termination or expiration of the applicable Participating Customer Contract or the termination or expiration of this Agreement. Seller, at Seller's sole cost, will uninstall and remove Seller Equipment as requested in writing by any Participating Customer or PSE within 90 days after the expiration or termination of the applicable Participating Customer Agreement or this Agreement.

7.2 Data Pulses.

7.2.1. Installation.

(a) Seller may request that PSE install Data Pulse Equipment onto the Interval Meter of a Participating Facility's Metering Device, to enable Seller to obtain and monitor electric energy usage data from such Participating Facility. The installation of Data Pulse Equipment will be at PSE's expense, and PSE will have the final decision at its sole discretion whether to install any Data Pulse Equipment. If PSE decides to grant any request to install Data Pulse Equipment at a Participant Facility, PSE and the Participating Customer will execute a "Contract For Installation of Electric Watt-Hour Data Pulses," substantially in the form attached to this Agreement as Exhibit D (the "Form of Customer Consent to Disclosure"), or under such other terms that are mutually acceptable by both PSE and such Participating Customer. Seller shall notify PSE of any failures of and/or necessary repairs to the Data Pulse Equipment by contacting the designated PSE program manager.

(b) At any time during the Term, PSE may request usage of wireless technology in lieu of Data Pulse Equipment. In that event, the Parties will cooperate with one another, in good faith, to implement PSE's preferred technology, at no cost to Seller.

7.2.2. Use of Data Pulse Equipment and Data.

Seller may utilize and acquire electric energy usage data from the Data Pulse Equipment or other technology utilized pursuant to Section 7.2.1 above so long as (a) Seller has obtained the Participating Customer's written consent for such utilization and acquisition, (b) such utilization and acquisition of electric energy usage data does not interfere with PSE's Metering Devices or associated communication devices, and (c) is permitted by Applicable Laws. Seller shall

provide full access to all data at all times upon request of PSE and deliver copies of requested data to PSE within 5 Business Days of PSE's request.

7.2.3. Disclaimer of Warranty.

Seller acknowledges and agrees that PSE is installing such Data Pulse Equipment at the Participating Facilities, or implementing other monitoring technology, as a convenience to Seller. PSE MAKES NO WARRANTY AS TO FITNESS OF PURPOSE, THE OPERATION OF, OR ACCURACY OF THE DATA PROVIDED THROUGH, THE DATA PULSE EQUIPMENT OR OTHER TECHNOLOGY, AND TAKES NO RESPONSIBILITY FOR SELLER'S USE OF THE DATA PULSE EQUIPMENT OR OTHER TECHNOLOGY AND DATA SUPPLIED THEREFROM, SINCE IT IS BEING SUPPLIED FOR INFORMATIONAL PURPOSES ONLY AND AS AN ACCOMMODATION TO SELLER.

7.3 Software.

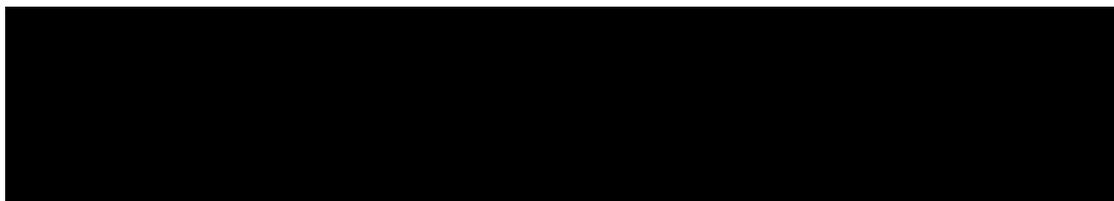
7.3.1. Demand Response Software.

Seller hereby grants to PSE during the Term, a non-exclusive, fully paid-up license to use the Demand Response Software for the purposes contemplated under this Agreement. Seller will configure the Demand Response Software to reflect each Product as detailed within this Agreement so that such configuration is available on the first day of the Term. The Demand Response Software will be integrated with PSE's distributed energy resource management system, currently provided by AutoGrid, using OpenADR protocols or similar industry standard protocols.

- (a) Company Interface. Seller will make available to PSE during the Term full access to the Demand Response Software to enable authorized personnel of PSE to view current and historical electricity usage at the portfolio or Participant Facility level for all Participating Facilities enabled with Seller Equipment for electric energy usage monitoring. During Product Events, Seller will configure and enable the Demand Response Software to display to PSE the Committed Load Reduction relative to actual and baseline usage for Participating Facilities and to provide PSE with an indication of expected load reduction and Product Event performance.
- (b) Participant Application. Seller will make the Demand Response Software available to Participating Customers to access their energy reduction plan, historical Product Event performance, and earnings from participation in the Program. Each Participating Customer whose Participant Facility is enabled with Seller Equipment for electric energy usage monitoring will have access to a near-real-time visualization of its real-time electricity usage and Product Event performance.

7.3.2. Uptime.

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7.3.3. Seller Representations.

Seller represents and warrants to PSE that: (i) the Software will conform to the specifications set forth in Section 7.3.1(a); (ii) the Demand Response Software does not and will not violate any third party's intellectual property rights, including all existing and future patent rights, copyrights, trademarks, database rights, moral rights, trade secrets, and other intellectual property rights recognized anywhere in the world, including all applications and registrations with respect thereto; and (iii) the Demand Response Software does not and will not contain any viruses or Trojan horses or other program codes, programming instructions, or set of instructions with the ability to damage, interfere with, or otherwise adversely affect computer programs, data files, or operations.

ARTICLE 8. PROJECT PERFORMANCE; LIQUIDATED DAMAGES

8.1 Committed Performance Level.

8.1.1. For every clock hour of each Capacity Delivery Month, Seller shall make available, provide and deliver upon dispatch, to PSE the Committed Load Reduction in effect during each Capacity Delivery Month. No amount of Committed Load Reduction or Actual Load Reduction may be non-compliant with the requirements of the Clean Energy Transformation Act.

8.1.2. For each Capacity Delivery Month in each Program Year, Seller will use best efforts to provide PSE with the Target Committed Load Reduction between the Upper and Lower bounds as set forth in the following table:

Program Year	

The Target Committed Load Reduction represents the average daily Committed Load Reduction, in MW, for all Products on Business Days between 6:00am and 10:00pm Pacific Time in the applicable Capacity Delivery Month.

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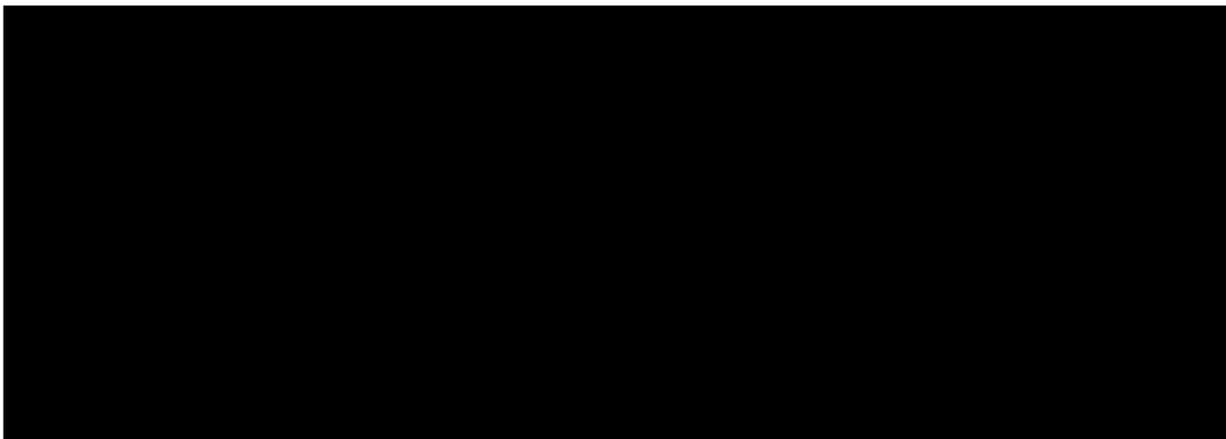
8.1.3. Monthly Committed Load Reduction

8.1.3.1. No later than 60 days prior to each Capacity Delivery Month, Seller will notify PSE in writing of the draft Committed Load Reduction by Product and in aggregate for the Product Portfolio that Seller expects to make available to PSE for dispatch during each clock hour of such Capacity Delivery Month. If the expected Committed Load Reduction does not fall within the applicable upper and lower bounds of the Target Committed Load Reduction set forth in Section 8.1.2, Seller will specify the reasons why in such notice.

8.1.3.2. No later than 5 Business Days prior to the first day of each Capacity Delivery Month and subject to Section 8.1.3.3, Seller will update the draft Committed Load Reduction for such month required under Section 8.1.3.2 and notify PSE in writing (in the format of the table below) of the final Committed Load Reduction by Product and in aggregate for the Product Portfolio available to PSE for dispatch during each clock hour of such Capacity Delivery Month. The final Committed Load Reduction established in accordance with this Section 8.1.3.2 will be the Committed Load Reduction that is “effective” or “in effect” for the applicable Capacity Delivery Month.

Year [], [1st of Month] to [30th of Month] Program Period	Committed Load Reduction (Total MWs)
[Month 1 st 00:00]	
[Month 1 st 01:00]	
[Month 1 st 02:00]	

8.1.3.3. Notwithstanding the other provisions of this Section 8.1.3, The Committed  average Committed Load Reduction in such Capacity Delivery Month.

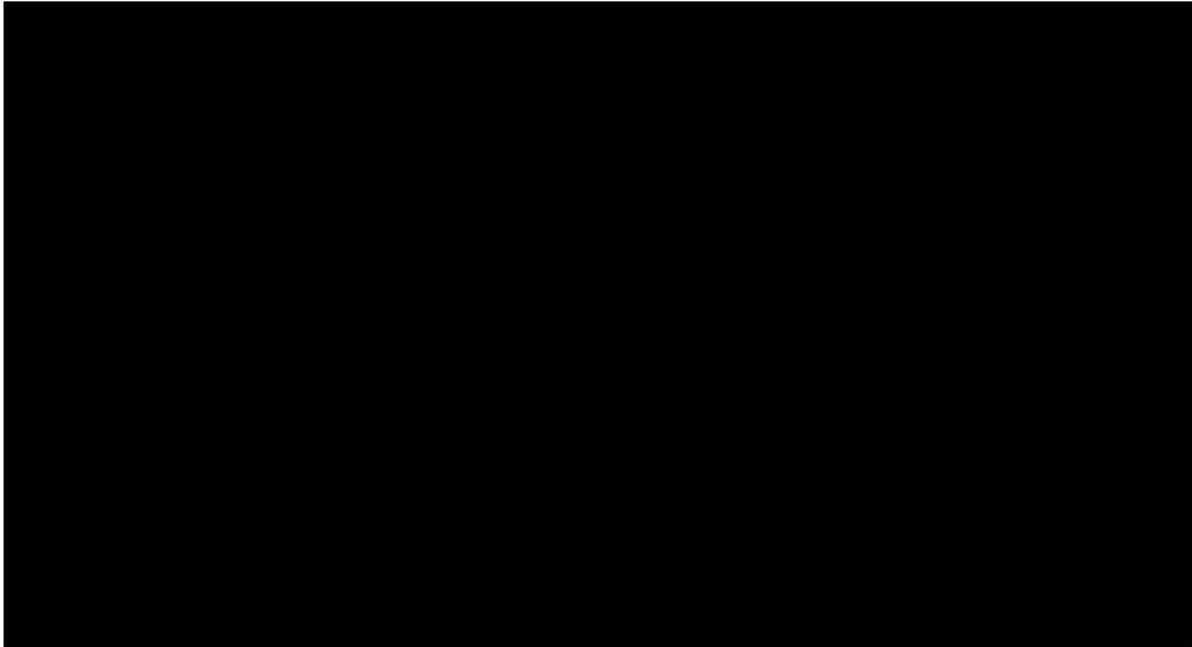


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8.1.5. Seller shall provide the applicable Committed Load Reduction for each Capacity Delivery Month in the corresponding Initial Monthly Invoice or Final Monthly Invoice, as further described in Section 9.1 hereof.

8.2 Capacity Shortfall Amounts.



8.3 Customer Service Metrics; Annual Performance Evaluation.

8.3.1. Seller shall comply with the customer service requirements as described in Exhibit C (the “Customer Service Metrics”). In addition, PSE and Seller agree to complete, by December 1st of each Program Year, an annual performance evaluation, which shall assess Seller’s performance with respect to meeting the Customer Service Metrics. If Seller fails to satisfy one or more of the Customer Service Metrics in any material respect, and the failure is not corrected within 60 days following written notice to Seller, PSE may, without liability to PSE, terminate this Agreement immediately upon delivery of written notice to Seller.

8.3.2. In connection with each performance evaluation, PSE may administer and disseminate to all Participating Customers a survey questionnaire prepared by PSE and approved by both PSE and Seller (such approval not to be unreasonably withheld). PSE shall request that all Participating Customers complete the survey, either online, by phone or in writing. The survey will use a 1 to 10 scale with 1 being extremely poor performance and 10 being outstanding performance. Seller is required to receive an average score of

greater than 7 on the survey questions listed below and such other survey questions that may be included in the survey questionnaire:

- How satisfied are you with Enel X overall?
- How satisfied are you with Enel X's communication with you?
- How satisfied are you with Enel X's management of your demand response events?
- How satisfied are you with the installation and maintenance of any equipment at your facility for the purposes of participating in the demand response program?

8.3.3. In the event that Seller fails to receive an average score of greater than 7 with respect to the survey questionnaires submitted in connection with any annual survey, PSE shall provide Seller with complete copies of each survey questionnaire. Seller shall have 60 days to improve its performance. At the end of such 60-day period, PSE shall (i) re-submit survey questionnaires to those Participating Customers that ranked Seller at seven or below in the previous survey questionnaire and (ii) include completed re-submitted survey questionnaires in the original calculation to determine whether Seller received an average score of greater than seven on the survey questions listed above (i.e., the original survey questionnaire of each Participating Customer that is requested to complete a re-submitted survey questionnaire shall be discarded and replaced with such re-submitted survey questionnaire). If Seller fails to receive an average score of greater than 7 when taking into account the re-submitted survey questionnaires, PSE may, without liability to PSE, terminate this Agreement immediately upon delivery of written notice to Seller, subject to a 15-day cure period during which Seller will exercise best efforts to address and cure the circumstances underlying the deficiency.

ARTICLE 9. BILLING AND PAYMENT

9.1 Monthly Invoices.

9.1.1. No later than the 30th day of each month following a Capacity Delivery Month, Seller shall prepare and deliver to PSE an invoice ("Initial Monthly Invoice") of the Monthly Capacity Payment payable in respect of such Capacity Delivery Month. In addition, and only as necessary to reflect any changes in Monthly Capacity Payment due or owed in respect of such Capacity Delivery Month, Seller shall prepare and deliver to PSE an invoice ("Final Monthly Invoice") no later than the 90 calendar days after a Capacity Delivery Month. Each Initial Monthly Invoice and Final Monthly Invoice (each, a "Monthly Invoice") shall include all documentation and calculations necessary to support the amounts set forth therein.

9.1.2. Statements, invoices and billings shall be delivered electronically to the following addresses:

If to Seller: accountspayable.enelxnorthamerica@enel.com w/ CC to Enel X
Program Manager

If to PSE: if Supplier has established an Ariba trade relationship with PSE,
Supplier will submit an electronic invoice and any other supporting

documentation via the Ariba Network eProcurement portal (for the avoidance of doubt, Supplier may not charge PSE for Ariba membership or transaction fees);

9.2 Payment.

9.2.1. PSE shall make payment on the undisputed amount of a Monthly Invoice no later than 30 days after receipt of such Monthly Invoice. In the event any Party is required to make any payment to the other Party under this Agreement (other than pursuant to a Monthly Invoice), such payment shall be made within 30 days after receiving notice of incurring such obligation to so pay.

9.2.2. If a Party fails to pay the full amount due to the other Party (excepting any disputed amount) on or before the close of business on the due date, the owing Party shall pay interest on the unpaid amount at the Late Payment Rate. If a due date occurs on a day that is not a Business Day, interest shall begin to accrue on the next succeeding Business Day.

9.2.3. Unless otherwise specified in this Agreement, all payments required to be made by either Party under this Agreement shall be made by check or by wire transfer, at the following addresses or accounts:

If to Seller: Bank:
 Address:
 City, State, Zip:
 ABA number (routing number):
 For Credit of:
 Account Number:

If to PSE: Please mail checks to:
 Puget Sound Energy
 ATTN: Accounts Payable, BOT 010
 19900 North Creek Pkwy
 Bothell, WA 98011

9.2.4. Remittances received by mail will be considered to have been paid when due if the postmark indicates the payment was mailed on or before the date required for such payment.

9.3 Billing Disputes.

To resolve any billing dispute, the Parties shall use the procedures set forth in Section 11.5. When the billing dispute is resolved, the Party owing shall pay the amount owed within 5 Business Days of the date of such resolution, with late payment interest charges calculated on the amount owed at the Late Payment Rate.

9.4 Offset.

PSE at any time may offset any and all undisputed amounts, including damages and other payments, that are past due and owed by Seller to PSE pursuant to this Agreement against any and all amounts that may be due and owing to Seller.

9.5 Payments to Participating Customers.

Seller shall create and issue payments to Participating Customers in connection with such Participating Customers' participation in the Program in accordance with the Participating Customer Contract, and in any event within 45 days of receipt of payment from PSE of all payments associated with the Program Period, as applicable. Payments to Participating Customers are Seller's sole responsibility.

ARTICLE 10. DEFAULT AND TERMINATION

10.1 Events of Default of Seller.

In addition to any other events specified as a Seller Event of Default, the occurrence of any one or more of the following events shall constitute a "Seller Event of Default":

- (a) Seller (i) becomes insolvent, generally does not pay its debts as they become due, or admits in writing its inability to pay its debts, (ii) makes an assignment or any general arrangement for the benefit of creditors, or (iii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors, or have such petition filed or proceeding commenced against it which is not dismissed or unstayed for a period of 60 days;
- (b) Seller assigns or transfers this Agreement or any right or interest herein, except as expressly permitted under Article 16;
- (c) Seller fails to maintain credit support as required by Section 17 and does not cure such failure within 15 Business Days;
- (d) Any material misrepresentation or omission by Seller in any report or notice required to be made or delivered by Seller to PSE, or undue delay or withholding of such data, report or Notice, which misrepresentation, omission or undue delay or withholding is not cured within ten (10) Business Days of PSE's written demand therefor;
- (e) Seller defaults on the due and timely payment of undisputed amounts of monies due hereunder when the same becomes due and payable, and such default continues for a period of 10 days after written notice thereof by PSE to Seller;
- (f) Seller intentionally or knowingly delivers, or attempts to deliver capacity reduction that is not produced by the Program and the Participating Customer Facilities;
- (g) Seller fails to meet its obligations under Section 7.3.2; or

- (h) Seller fails to perform or observe any other material covenant, representation, warranty, obligation or agreement required of Seller in this Agreement, other than a failure for which a specific remedy is provided, and such failure continues for a period of 30 days after written notice thereof by PSE to Seller.

10.2 Events of Default of PSE.

PSE shall be in material default of its obligations pursuant to this Agreement upon the occurrence of any one or more of the following events of default (each, a “PSE Event of Default”):

- (a) PSE (i) becomes insolvent, generally does not pay its debts as they become due, or admits in writing its inability to pay its debts, (ii) makes an assignment or any general arrangement for the benefit of creditors, or (iii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or case under any bankruptcy or similar law for the protection creditors, or have such petition filed or proceeding commenced against it which is not dismissed or unstayed for a period of 60 days;
- (b) PSE assigns or transfers this Agreement or any right or interest herein, except as expressly permitted under Article 16;
- (c) PSE defaults on the due and timely payment of undisputed amounts of monies when the same becomes due and payable, and such default continues for a period of 10 days after written notice thereof by Seller to PSE; or
- (d) PSE defaults in the performance or observance on its part of any other material covenant, representation, warranty, obligation or agreement required of PSE in this Agreement, and such default continues for a period of 30 days after written notice thereof by Seller to PSE.

10.3 Remedies.

10.3.1. If a Seller Event of Default or PSE Event of Default (“Event of Default”) occurs and is continuing, the non-defaulting Party may terminate this Agreement effective upon giving written notice thereof. Such notice will specify the date of termination, describe in reasonable detail the circumstances giving rise to the termination, and set forth the non-defaulting Party’s calculation of the Termination Payment in reasonable detail, together with appropriate supporting documentation.

10.3.2. If the non-defaulting Party terminates this Agreement under Section 10.3.1, the defaulting Party will pay a “Termination Payment” equal to the positive amount (if any) of: (1) the sum of the non-defaulting Party’s Termination Costs and Termination Losses minus (2) the non-defaulting Party’s Termination Gains (“Termination Payment”). The Defaulting Party will pay the Termination Payment to the non-defaulting Party within ten (10) Business Days after the date of termination. “Termination Losses” means, with respect to the non-defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Termination Costs and exclusive of damages described in the first sentence of

Section 14.3), resulting from termination of this Agreement for its remaining term, determined in a commercially reasonable manner. "Termination Costs" means, with respect to the non-defaulting Party, (a) all reasonable attorneys' fees and expenses incurred by the non-defaulting Party in connection with the termination; (b) reasonable third party consultant fees and expenses incurred by the non-defaulting Party in calculating Termination Gains and Termination Losses, and (c) brokerage fees, unwinding costs, commissions, and other similar costs and expenses incurred by the non-defaulting Party. "Termination Gains" means with respect to the non-defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Termination Costs), resulting from the termination of this Agreement for its remaining term, determined in a commercially reasonable manner. The Termination Payment specified hereunder, once paid, will be the non-defaulting Party's sole remedy under this Agreement for any preceding event of default, breach or other factor leading to the termination of this Agreement, and the Defaulting Party will have no further liability in respect thereof.

10.3.3. Except as expressly provided in the preceding Section 10.3.2 or elsewhere in this Agreement, nothing in this Agreement shall be construed to limit any right or remedy available at law or in equity to the Parties, including the right to any and all damages for any breach or other failure to perform hereunder. All remedies in this Agreement shall survive termination or cancellation of this Agreement and are cumulative.

10.4 Termination for Convenience.

10.4.1. PSE may terminate this Agreement if PSE, in its reasonable judgment, determines that such termination is required or necessary due to a change in Applicable Laws (which may, if applicable, include an order issued by the WUTC). Any such termination shall be effected by delivery to Seller of written notice specifying the date upon which such termination becomes effective, such date to be on or after January 1st of the following calendar year.

10.4.2. Upon Seller's receipt of a termination notice delivered in accordance with Section 10.4.1, Seller shall notify each Participating Customer of the Termination Date.

ARTICLE 11. CONTRACT ADMINISTRATION AND NOTICES

11.1 Notices in Writing.

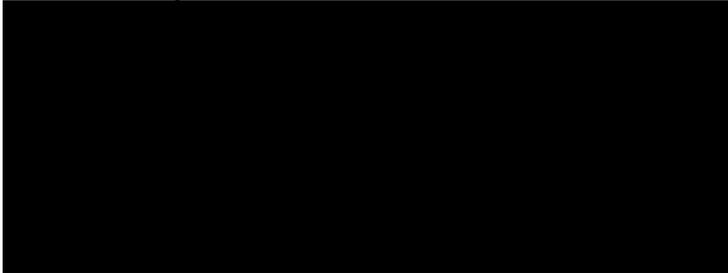
Except as otherwise set forth in this Agreement, including Section 4.2, any notice, request, consent, or other communication required or authorized under this Agreement to be given by one Party to the other Party shall be in writing and delivered to the address(es) for such other Party as set forth in Exhibit E (as may be updated from time to time by written of such other Party), and shall either be (a) personally delivered, (b) sent by U.S. first-class mail, postage prepaid, or (c) sent via a nationally recognized pre-paid overnight courier service. Any such notice, request, consent, or other communication, including any notice of the type described in Section 4.2, shall be deemed to be given only when actually received.

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11.2 Authority of Representatives.

The Parties' representatives designated below (each, a "Party Representative") shall have authority to act for its respective principals in all technical matters relating to performance of this Agreement and to attempt to resolve disputes or potential disputes.

Seller Representative:



PSE Representative:

Jeff Tripp
Manager Strategic Program Initiatives
c/o Puget Sound Energy
20111 120th Ave NE,
Bothell, WA 98011
Phone (office): 425-424-6579
Email: jeff.tripp@pse.com

However, except as provided in Section 4.2.3, no Party Representative will have the authority to amend or modify any provision of this Agreement. Either Party may designate an alternate or substitute Party Representative by notice to the other Party hereto.

11.3 Contract Records and Audits.

11.3.1. Seller shall maintain complete and accurate: (a) records of and supporting documentation for all charges under this Agreement, (b) complete and accurate logs of all material operations, which will include all information on dispatch instructions provided to customers, customer response to dispatch direction, availability, maintenance performed, outages, electrical characteristics of Seller Equipment and Participating Customer Facilities, and similar information relating to the availability, testing and operation of the Program ("Operations Log"), (c) and other data and/or information created, generated, collected, processed or stored by Seller in its performance under this Agreement (all such records, documentation, data, and information, "Contract Records"). Unless PSE instructs Seller to delete or destroy any Contract Records or requests the return of such Contract Records to PSE, Seller shall retain Contract Records for a period of at least six (6) years after the date of the performance or after termination of this Agreement (the "Retention Period").

11.3.2. Seller shall provide Operational Logs electronically to PSE within three (3) days of PSE's written request.

11.3.3. Seller shall provide to PSE and its representatives through the Retention Period, access at reasonable hours to Seller personnel and facilities and to Contract Records and

other pertinent information, all to the extent relevant to Seller's performance under this Agreement. Seller has the right to use general audit software and other reporting tools against the data files or databases dedicated to the services provided under this Agreement and (A) will be provided direct access to data (if databases are merged and segmented logically) or (B) will review extract program or code with code run under supervision of PSE's auditor. Such access shall be provided for the purpose of performing audits and inspections to, among other things, (1) verify the accuracy and completeness of Contract Records, (2) verify the accuracy and completeness of charges under this Agreement, and (3) examine Seller's compliance with its obligations under this Agreement. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Late Payment Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twenty-four (24) months from the rendition thereof, and thereafter any objection shall be deemed waived. Except as otherwise provided in this paragraph, each Party will be responsible for its own costs associated with any audit activity pursuant to this Section 11.3.3. If an audit reveals an overcharge of more than 10% by Seller, then Seller shall promptly reimburse PSE for the reasonable cost of the portion of such audit relating to the overcharge.

11.4 Governing Law; Dispute Resolution.

11.4.1. Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Washington without regard its conflicts of laws provisions.

11.4.2. Consent to Jurisdiction.

(a) Each of the Parties hereto hereby irrevocably consents and agrees that any legal action or proceedings with respect to this Agreement shall be brought exclusively in any of the courts of the United States of America located in the United States District Court for the Western District of Washington, having subject matter jurisdiction, or if such court lacks subject matter jurisdiction, then the state district court for King County, Washington.

(b) By execution and delivery of this Agreement and such other documents executed in connection herewith, each Party hereby: (i) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court with respect to such documents; (ii) irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceedings with respect to such documents brought in any such court, and further irrevocably waives, to the fullest extent permitted by law, any claim that any such suit, action or proceedings brought in any such court has been brought in any inconvenient forum; (iii) agrees that service of process in any such action may be effected by mailing a copy thereof by certified mail, return receipt requested, postage prepaid, to such Party its address(es) set forth in Exhibit E, or at such other address of which the other Parties hereto shall have been notified; and (iv) agrees that nothing

herein shall affect the right to effect service of process in any other manner permitted by law.

11.4.3. Waiver of Trial by Jury. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

11.4.4. Disputes. In the event of any good faith dispute, controversy or claim between the Parties arising out of or relating to this Agreement (collectively, a “Dispute”), the Parties shall attempt in the first instance to resolve such Dispute through friendly consultations between the Parties. If such consultations do not result in a resolution of the Dispute within thirty (30) days after notice of the Dispute has been delivered to either Party, then such Dispute shall be referred to the senior management of the Parties for resolution. If the Dispute has not been resolved within thirty (30) days after such referral to the senior management of the Parties, then either Party may pursue all of its remedies available in law or equity. The Parties agree to attempt to resolve all Disputes promptly, equitably and in a good faith manner, provided, however, that failure to resolve a Dispute shall not, standing alone, constitute a breach of this Agreement. Notwithstanding the existence of a Dispute, each Party shall fulfill its obligations in accordance with the terms hereof.

11.4.5. Specific Performance. The Parties agree that no adequate remedy at law may exist for a breach or threatened breach of any of the provisions of this Agreement, the continuation of which unremedied will cause the aggrieved Party to suffer irreparable harm. Accordingly, the Parties agree that the Parties shall be entitled, in addition to other remedies that may be available to them, to pursue injunctive relief from any breach or threatened breach of any of the provisions of this Agreement and to pursue specific performance of their rights hereunder, as well as to any other remedies available at law or in equity. This right of pursue specific enforcement is an integral part of the transactions contemplated by this Agreement and without that right, the Parties would not have entered into this Agreement. The Parties shall not be required to provide any bond or other security in connection with any such order or injunction. The Parties also agree that the seeking of any remedies pursuant to this Section 11.4.5 shall not in any way constitute a waiver of any right to seek any other form of relief that may be available under this Agreement.

ARTICLE 12. REPRESENTATIONS AND WARRANTIES; COVENANTS

12.1 Seller’s Representations and Warranties.

Seller hereby represents and warrants as follows:

- (a) Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware;
- (b) The person executing this Agreement on behalf of Seller has full power and authority to execute and deliver this Agreement;
- (c) The execution, delivery, and performance of its obligations under this Agreement have been duly authorized by all necessary corporate action, and do not:
 - (i) require any consent or approval of Seller's Board of Directors or stockholders or any governmental authority, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to PSE upon its request);
 - (ii) violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award currently in effect having applicability to Seller or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this Agreement; or
 - (iii) result in a material breach or constitute a material default under Seller's formation documents or bylaws, or under any material agreement to which Seller is a party or any indenture or loan or credit agreement, or any other material agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement.
- (d) This Agreement constitutes a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms (except as may be limited by bankruptcy, insolvency, or similar laws of general application and by the effect of general principles of equity, regardless of whether considered at law or in equity);
- (e) With each submission of a Notice to Add Participating Facility, at the time of such submission and thereafter until such Participating Facility is removed from the program under Section 3.1:
 - (i) The Participating Facilities set forth in such Notice to Add Participating Facility will be Eligible Facilities; and
 - (ii) Seller and each Participating Customer of each Participating Facility set forth in such Notice to Add Participating Facility will have entered into a Participating Customer Contract that shall continue in full force and effect.
- (f) With each submission of a Notice to Remove Participating Facility, at the time of such submission, (i) each Participating Customer of each Participating Facility listed in such notice will have elected to terminate its participation in the Program indefinitely, (ii) each Participating Customer Contract in respect of each

Participating Facility listed in such notice will have been terminated, or (iii) each Participating Facility will have elected in writing to pause participation in the program for a specified duration of time, such as a Program Year.

- (g) There has been no materially adverse change in Seller's financial position or creditworthiness from the date of the then-latest available and provided financial statements that reasonably presents a risk to Seller's ability to perform under this Agreement.

12.2 PSE's Representations and Warranties.

PSE hereby represents and warrants the following:

- (a) PSE is a regulated electric utility duly formed and validly existing under the laws of the State of Washington;
- (b) The person executing this Agreement on behalf of PSE has full power and authority to execute and deliver this Agreement;
- (c) This Agreement constitutes a valid and binding obligation of PSE, enforceable against PSE in accordance with its terms (except as may be limited by bankruptcy, insolvency, or similar laws of general application and by the effect of general principles of equity, regardless of whether considered at law or in equity); and
- (d) The execution, delivery, and performance of its obligations under this Agreement by PSE have been duly authorized by all necessary corporate action, and do not:
 - (i) require any consent or approval of PSE's Board of Directors or any governmental authority, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to Seller upon its request);
 - (ii) violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award currently in effect having applicability to PSE or violate any provision in any formation documents of PSE, the violation of which could have a material adverse effect on the ability of PSE to perform its obligations under this Agreement; or
 - (iii) result in a material breach or constitute a material default under PSE's formation documents or bylaws, or under any material agreement to which PSE is a party or any indenture or loan or credit agreement, or any other material agreement, lease, or instrument to which PSE is a party or by which PSE or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of PSE to perform its obligations under this Agreement.

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12.3 Seller's Covenants.

12.3.1. Seller covenants that Seller shall comply with all Applicable Laws, including all applicable consumer protection, marketing, solicitation, anti-corruption, anti-bribery, anti-money laundering, anti-terrorism and economic sanction and anti-boycott laws.

12.3.2. Seller shall notify PSE promptly, but in no event later than five (5) Business Days, after Seller or its representatives have actual knowledge of any adverse legal action or lawsuit, investigation, or concerted media campaign against or involving the matters covered by this Agreement and the performance thereof or Seller that could reasonably be expected to negatively affect the reputation of PSE's distributed energy resource and demand response programs, Seller, or PSE in connection thereto (each, a "Reputational Event"). At the request of PSE, Seller shall communicate and cooperate with PSE on its response(s) to such a Reputational Event. Seller shall consider in good faith any reasonable comments provided by PSE in the course of developing documentation related to Seller's response to such Reputational Event.

ARTICLE 13. WORKERS' COMPENSATION AND INSURANCE

13.1 At all times during the Initial Term and for the periods after the Initial Term identified below, Seller will procure and maintain, at its sole cost and expense, insurance with provisions, coverages, and limits as specified below, and will require all Subcontractors to maintain such insurance as applicable to their performance in connection with the Agreement. Seller will maintain the insurance and coverages described herein in full force and effect at all times: (i) until all of Seller's obligations under the Agreement have been fully performed and all operations of Seller have been completed; and (ii) in the case of completed operations and product liability, professional liability, and any "claims made" umbrella or excess insurance, until the expiration of three (3) years after the end of the Term, through continued policy renewals or purchase of "tail coverage."

13.1.1. Workers Compensation and Employer's Liability.

[Redacted]

13.1.2. Commercial General Liability Insurance.

[Redacted]

13.1.3. Automobile Liability Insurance.

[Redacted]

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[Redacted]

13.1.4. Cyber Liability.

[Redacted]

13.1.5. Professional Liability.

[Redacted]

13.2 Prior to performing any services or goods and within ten (10) days after execution of this Agreement, Seller shall furnish PSE with a certificate of insurance demonstrating the insurance required in Section 13.1. Subject to Section 13.3(f), within forty-five (45) days after any renewal, cancellation, or expiration of any policy of insurance required under the Agreement, Seller will deliver to PSE a certificate of insurance with respect to any replacement policy. If requested by PSE, Seller will provide PSE a copy of any certificate of insurance required to be maintained under this Article 13.

13.3 All policies of insurance required under this Agreement must:

(a) be placed with an insurance carrier maintaining an AM Best rating of at least A- VII and licensed to do business under the laws of the State of Washington;

(b) with the exception of workers' compensation, employer's liability, and professional liability insurance, be endorsed to name PSE, its subsidiaries and affiliates, and each of their respective shareholders, directors, officers, employees, representatives, and agents (the "Owner Parties") as additional insureds;

(c) be primary insurance with respect to the interests of the Owner Parties; any insurance or self-insurance maintained by any of the Owner Parties will be excess and non-contributory insurance with respect to the insurance required herein;

- (d) include a provision providing a waiver of the insurer's right to subrogation against each of the Owner Parties. To the extent permitted by its policies of insurance, Seller hereby waives all rights of subrogation against each of the Owner Parties;
- (e) with the exception of workers' compensation, employer's liability, Auto, and professional liability insurance, apply severally and not collectively to each insured against whom any claim is made or suit is brought, except that the inclusion of more than one insured shall not operate to increase the insurance company's limits of liability as set forth in the insurance policy; and
- 13.4 Seller will be solely responsible for any premium, deductible, self-insured retention, and similar self-insurance mechanism amounts contained in its insurance program and for any deficiencies in the amounts of insurance maintained. Seller will have no right to call upon or seek contribution from the Owner Parties for deductibles, except to the extent damage is caused by the Owner Parties, self-insured retentions, similar self-insurance mechanisms, or insurance premiums associated with policies of insurance required in this Agreement.
- 13.5 The requirements of this Agreement as to insurance and acceptability to PSE of insurers and insurance to be maintained by Seller are not intended to and will not in any way limit or qualify any other obligation of Seller under the Agreement. Seller will be held accountable for all insurance coverage, including that of any subcontractors hired by seller. Insurance will be independent of the indemnity provisions of this Agreement, and insurance hereunder is not designed solely to guarantee payment of Seller's indemnity obligations.
- 13.6 Seller will comply with all Occupational Health and Safety Administration ("OSHA") recordkeeping and injury reporting requirements. Seller will report to PSE within 24 hours any OSHA recordable injuries that occur while performing work on behalf of PSE. A "recordable injury" includes any injury that results in treatment beyond first aid, restricted workdays, and/or lost workdays. Seller must provide the following details via email to safety@pse.com: Seller's formal legal name, date and location of incident, a short description of the incident, and whether the recordable injury includes one or more lost workdays (not including the date of injury).

ARTICLE 14. INDEMNITY

14.1 General Indemnity.

Seller hereby indemnifies, defends and holds harmless PSE, and its current and future parent company(ies), subsidiaries, affiliates and their respective shareholders, officers, directors, employees, successors and assigns (collectively, and including such other Party, the "Indemnified Parties"), from and against any and all claims, demands, actions, suits, proceedings, losses, liabilities, penalties, interest, fines, damages, costs or expenses, including reasonable attorneys' fees and witness fees of any type (collectively, "Claims and Losses"), to the extent resulting from or arising in connection with:

- (a) the fault, intentional act or omission, negligence or strict liability of Seller or any employee, officer, director, agent, representative, contractor, successor or assign of Seller in relation to this Agreement or the Program;

- (b) any material breach of the representations, warranties, covenants and obligations of Seller under this Agreement;
- (c) any breach by Seller of any Participating Customer Contract;
- (d) the installation, maintenance, ownership, operation and removal of Seller Equipment; or
- (e) Seller's use or operation of any Data Pulse Equipment installed pursuant to Section 7.2.1.

The foregoing indemnification obligation shall extend to indemnify, defend and hold harmless the Indemnified Parties where they are allegedly concurrently negligent with Seller, any subcontractor or supplier of Seller, or any of the directors, officers, partners, agents, servants or employees of Seller, or of its subcontractors or suppliers, in causing or contributing to the liability causing event, but Seller's obligation shall apply only to the extent of the Claims and Losses that are not caused by the Indemnified Party's concurrent negligence.

14.2 Indemnification Procedure.

14.2.1. Notification and Participation. Promptly after receipt by any Indemnified Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article may apply, PSE shall notify Seller in writing of such fact. The failure to give such notice, however, shall not affect the obligation to provide indemnification in accordance with the provisions of this Agreement unless, and only to the extent that, Seller is actually prejudiced by such failure. Seller shall be entitled to participate at its own expense in the defense or, if it so elects, to assume the defense thereof with counsel designated by Seller and reasonably satisfactory to the Indemnified Party. The Indemnified Party shall have the right to select and be represented by separate counsel, at its own reasonable expense.

14.2.2 Indemnification Costs. Seller shall bear all fees and expenses of the counsel retained by the Indemnified Party if (i) Seller elects not to assume, or expressly waives its right to assume, the defenses of such action, (ii) Seller, within thirty (30) days after the foregoing notice of the commencement of the action, has not employed counsel reasonably satisfactory to the Indemnified Party to represent the Indemnified Party, or (iii) Seller has authorized the employment of counsel for the Indemnified Party at the expense of Seller. If Seller fails to assume the defense of a claim subject to indemnification, the Indemnified Party may at the expense of Seller contest, settle, or pay such claim, provided that settlement or full payment of any such claim may be made only following consent of Seller (not to be unreasonably withheld).

14.2.3 Survival. Section 14.1 and this Section 14.2 shall survive the expiration or termination of this Agreement with respect to any Claim or Loss for which notice is provided within 12 months from the date of termination or expiration of this Agreement.

14.3 Waiver of Consequential Damages; Acknowledgement of Liquidated Damages.

NOTWITHSTANDING ANYTHING IN THE AGREEMENT TO THE CONTRARY (EXCEPT AS SPECIFIED IN THIS SECTION 14.3), NEITHER PARTY NOR ITS SUBSIDIARIES OR AFFILIATES NOR THE OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, PARTICIPATING CUSTOMERS, PARTNERS, MEMBERS, SHAREHOLDERS, PRINCIPALS, DIRECTORS, TRUSTEES, SUCCESSORS OR ASSIGNS OF ANY OF THEM SHALL IN ANY EVENT BE LIABLE TO THE OTHER PARTY OR ITS SUBSIDIARIES OR AFFILIATES OR THE OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, PARTICIPATING CUSTOMERS, PARTNERS, MEMBERS, SHAREHOLDERS, PRINCIPALS, DIRECTORS OR TRUSTEES OF ANY OF THEM FOR PUNITIVE, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY NATURE, ARISING AT ANY TIME, FROM ANY CAUSE WHATSOEVER, WHETHER ARISING IN TORT, CONTRACT, WARRANTY, STRICT LIABILITY, BY OPERATION OF LAW OR OTHERWISE, CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT. THE FOREGOING WAIVER OF CONSEQUENTIAL AND OTHER INDIRECT DAMAGES WILL NOT APPLY WITH RESPECT TO THIRD PARTY CLAIMS AND LOSSES FOR WHICH A PARTY IS OBLIGATED UNDER THIS AGREEMENT TO INDEMNIFY THE OTHER.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. SUCH LIQUIDATED DAMAGES WILL BE THE SOLE AND EXCLUSIVE MONETARY REMEDY OF THE PARTY ENTITLED TO SUCH DAMAGES IN ANY SUCH CIRCUMSTANCE.

NOTWITHSTANDING ANYTHING IN THE AGREEMENT TO THE CONTRARY (EXCEPT AS SPECIFIED IN THIS SECTION 14.3), EACH OF SELLER'S AND PSE'S AGGREGATE LIABILITY IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREUNDER, WHETHER ARISING IN TORT, CONTRACT, WARRANTY, STRICT LIABILITY, BY OPERATION OF LAW OR OTHERWISE, IS LIMITED TO THE AGGREGATE VALUE OF THE CAPACITY PAYMENTS FROM THE MOST RECENT PROGRAM SEASON. HOWEVER, THE FOREGOING LIMITATION ON DAMAGES WILL NOT APPLY TO: (A) SELLER'S OBLIGATIONS UNDER SECTIONS 8.2 HEREOF; (B) EITHER PARTY'S OBLIGATIONS UNDER SECTION 18.5 HEREOF; (C) CLAIMS ARISING OUT OF OR IN CONNECTION WITH THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF SELLER OR PSE OR THEIR RESPECTIVE AGENTS, EMPLOYEES, OR SUBCONTRACTORS; OR (D) THIRD-PARTY CLAIMS AND LOSSES FOR WHICH A PARTY IS OBLIGATED UNDER THIS AGREEMENT TO INDEMNIFY THE OTHER.

ARTICLE 15. REGULATORY JURISDICTION AND COMPLIANCE

15.1 Governmental Jurisdiction and Regulatory Compliance.

Each Party shall at all times comply with all applicable laws, statutes, ordinances, codes, permits, authorizations, judgements, decrees, writs, injunctions, rules, orders, decisions, regulations, approved tariffs, and any other legal or regulatory determination or restriction, of any governmental or regulatory agency or authority (including the WUCT, North American Electric Reliability Corporation, and the Western Electricity Coordinating Council) or any binding interpretation or application of any of the foregoing, that is applicable to such Party and its activities under this Agreement (“Applicable Laws”) and shall give all notices, and shall procure and maintain all governmental permits, licenses, and inspections, as may be required by Applicable Laws or otherwise necessary for its performance of this Agreement.

15.2 Provision of Support.

Seller shall make available, upon PSE’s reasonable request, any personnel of Seller and any records relating to the Participating Facilities to the extent that PSE requires the same in order to fulfill any regulatory approval and reporting requirements, or to assist PSE in litigation, including administrative proceedings before any government or regulatory agency or authority.

ARTICLE 16. ASSIGNMENT AND OTHER TRANSFER RESTRICTIONS

16.1 No Assignment Without Consent.

Except as permitted below, neither Party shall assign its rights, interests or obligations in this Agreement or any portion hereof without the prior written consent of the non-assigning Party, such consent not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, either Party may, without the other Party’s consent, assign this Agreement and its rights, interests, and obligations hereunder to an entity that controls, is controlled by, or is under common control with the assigning Party and which meets the credit requirements of Article 17 below, provided that with respect to any proposed assignment by PSE or Seller, PSE or Seller, as the case may be, shall deliver or cause to be delivered to the other Party evidence reasonably satisfactory to the non-assigning Party of the technical and financial capability of the proposed assignee to carry out Seller’s obligations under this Agreement. Any assignee of a Party shall expressly assume in writing the assigning Party’s obligations hereunder, unless otherwise agreed to in writing by the non-assigning Party. No assignment, whether or not consented to, shall relieve the assigning Party of its obligations hereunder in the event the assignee fails to perform, unless the non-assigning Party agrees in writing to waive such assigning Party’s continuing obligations under this Agreement. No assignment shall impair any Letter of Credit given by Seller hereunder.

16.2 Transfer Without Consent Null and Void.

Any assignment by either Party of any interest in this Agreement made in contravention of the provisions of Section 16.1 above shall be null and void and shall constitute an Event of Default pursuant to Article 10.

ARTICLE 17. CREDIT REQUIREMENTS

17.1 Financial Information.

Seller shall deliver to PSE financial information as PSE may reasonably request from time to time in order for PSE to determine whether Seller is able to perform its obligations under this Agreement and the Program.

ARTICLE 18. MISCELLANEOUS

18.1 Waiver.

The failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this Agreement, or to exercise any of its rights under this Agreement, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

18.2 Taxes.

Seller shall be responsible for any and all present or future federal, state, municipal, or other taxes due as a result of compensation paid to Seller hereunder or applicable by reason of the operation of the Program.

18.3 Relationship of the Parties.

18.3.1. No Joint Venture. This Agreement shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any Agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

18.3.2. Employees. Seller shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of persons to perform such services, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the persons employed by Seller shall be considered employees of PSE for any purpose; nor shall Seller represent to any person that he or she is or shall become a PSE employee.

18.4 Equal Employment Opportunity Compliance Certification.

Seller acknowledges that as a government contractor PSE is subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative

action. These laws may also be applicable to Seller. To the extent applicable, RCW 82.08.962 and 82.12.962 and all equal opportunity and affirmative action clauses, including the Equal Opportunity Clause provided for in the Regulations issued pursuant to Executive Order 11246, the Affirmative Action Clause for Handicapped Workers provided for in the Regulations issued pursuant to the Rehabilitation Act of 1973, and the Affirmative Action Clause for Disabled Veterans and Veterans of the Vietnam era provided for in the regulations issued pursuant to the Vietnam Veterans Adjustment Act of 1974, are hereby incorporated herein to the extent required by Applicable Laws.

18.5 Confidentiality.

18.5.1. Definition of Confidential Information.

For purposes of this Agreement, the term “Confidential Information” means information, whether furnished by Seller, PSE or otherwise, concerning the business, operations, assets, customers and employees of PSE and Seller and their respective current or former parent companies, subsidiaries and/or affiliates, including the terms and conditions of this Agreement or any related agreement, information or materials prepared in connection herewith, or any related subsequent agreement, designs, drawings, specifications, customer, supplier or personnel names and other information related to customers, suppliers or personnel, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form, which is confidential in nature and any other trade secrets. Confidential Information will include all PSE Information.

18.5.2. Nondisclosure.

Except as otherwise provided herein and except with the prior written consent of the disclosing Party, the receiving Party shall keep confidential and not disclose Confidential Information to any third party (other than affiliates, directors, officers, employees, and subcontractors of the receiving Party who have a bona fide need to know of such Confidential Information and who are obligated to maintain the confidentiality of such Confidential Information (“Receiving Party Representatives”) and shall not disclose to any third party (other than Receiving Party Representatives) the fact that such Confidential Information has been made available to receiving Party. The receiving Party agrees to use, and shall cause Receiving Party Representatives to use, the higher of the same degree of care receiving Party uses with respect to its own proprietary or confidential information, which in any event shall result in a reasonable standard of care to prevent unauthorized use or disclosure of the Confidential Information. The receiving Party hereby agrees that it shall use, and shall cause Receiving Party Representatives to use, the Confidential Information solely for the purpose of performing under this Agreement and not in any way detrimental to the disclosing Party, and its respective parent company(ies), subsidiaries and/or affiliates. Neither the receiving Party nor Receiving Party Representatives shall use the Confidential Information for their own benefit other than as permitted under this Agreement. Each Party shall be responsible for any unauthorized disclosure of the other Party’s Confidential Information by any of its Receiving Party Representatives.

18.5.3. Permitted Disclosure.

Notwithstanding the provisions of Section 18.5.2 above, receiving Party may disclose Confidential Information in the event, but only to the extent, that, based upon advice of counsel, receiving Party is required to do so by the disclosure requirements of any law, rule, regulation or any order, decree, subpoena or ruling or other similar process of any court, governmental agency, regulatory authority or stock exchange. Prior to making or permitting any such disclosure, receiving Party shall provide the disclosing Party with prompt written notice of any such requirement so that the disclosing Party (with Receiving Party's assistance if requested by the disclosing Party) may seek a protective order or other appropriate remedy. Seller understands that, as a regulated public utility in the State of Washington, PSE may be subject to certain disclosure requirements that may not permit PSE to provide prior notice of required disclosures, but that PSE will provide notice as soon as practicable after any such required disclosure. Seller further understands that any Confidential Information provided to a governmental agency or regulatory authority by PSE is subject to the Public Records Act (RCW Chapter 42.56) and that PSE will have no liability to Seller of any public disclosure of Confidential Information by any governmental agency or regulatory authority.

18.5.4. Retention.

At any time upon the written request of the disclosing Party, receiving Party shall promptly return to the disclosing Party or destroy if so directed by the disclosing Party (with such destruction to be certified to the disclosing Party) (i) all Confidential Information (and, except as described in the last sentence of this Section 18.5.4, all copies, backups and abstracts thereof, however stored) furnished to receiving Party or Receiving Party Representatives, (ii) all documents furnished to or prepared by receiving Party or Receiving Party Representatives that contain Confidential Information (and, except as described in the last sentence of this Section 18.5.4, all copies, backups and abstracts thereof, however stored), and (iii) all other documents in receiving Party's or Receiving Party Representatives' possession that contain or that are based on or derived from Confidential Information (and, except as described in the last sentence of this Section 18.5.4, all copies, backups and abstracts thereof, however stored). Notwithstanding the foregoing, the receiving Party may elect to destroy rather than deliver any Confidential Information furnished to it if the Confidential Information is imbedded within documents or records prepared by the receiving Party (with such destruction to be certified to the disclosing Party). Furthermore, the receiving Party may retain copies of any Confidential Information (including Confidential Information stored on electronic, magnetic or similar media) in accordance with receiving Party's policies and procedures: (a) implemented in order to comply with legal and regulatory recordkeeping requirements; or (b) if such Confidential Information is stored on receiving Party's electronic archival systems and deleting or destroying such Confidential Information is impracticable.

18.5.5. Survival.

Notwithstanding the return or destruction of all or any part of the Confidential Information, the confidentiality provisions set forth in this Agreement shall nevertheless remain in full force and effect with respect to specific Confidential Information until the date that is 5 years after the termination or expiration of this Agreement, except that, with respect to Confidential Information comprising PSE Information, including names, telephone numbers, addresses, billing information, electronic mail addresses and electric energy usage information and other PSE Information, such confidentiality provisions shall remain in full force in effect with respect to such Confidential Information in perpetuity.

18.5.6. Remedies.

The Parties acknowledge that the Confidential Information is valuable and unique, and that damages would be an inadequate remedy for breach of this Agreement and the obligations of receiving Party are specifically enforceable. Accordingly, the Parties agree that in the event of a breach or threatened breach of this Section 18.5 by Seller, PSE, or their respective parent company(ies), subsidiaries and/or affiliates, the non-breaching Party shall be entitled to seek an injunction preventing such breach, without the necessity of proving damages or posting any bond or first complying with the procedures set forth in Section 11.5(a). Any such relief shall be in addition to, and not in lieu of, monetary damages or any other legal or equitable remedy available to PSE, Seller, and their direct and indirect parent company(ies), subsidiaries or affiliates.

18.6 Survival of Obligations.

18.7 Cancellation, expiration, or early termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including, but not limited to, warranties, remedies, or indemnities generally, Article 9 (Billing and Payment), Article 14 (Indemnity), Section 11.4 (governing Law; Dispute Resolution), Section 18.2 (taxes), Section 18.5 (Confidentiality), and Section 18.7 (Severability), which shall survive for the period of the applicable statute(s) of limitation. The applicable provisions referenced above shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination and, as applicable, to provide for final payments and adjustments related to the period prior to termination, payment of any money due and owing to either Part pursuant to this Agreement and the indemnifications specified in this Agreement. Severability.

In the event any of the terms, covenants, or conditions of this Agreement, or the application of any such terms, covenants, or conditions, are held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the Agreement and their application not adversely affected thereby shall remain in full force and effect.

18.8 Complete Agreement; Amendments.

The terms and provisions contained in this Agreement constitute the entire agreement between PSE and Seller with respect to the matters set forth in this Agreement and shall supersede all previous communications, representations, or agreements, either verbal or written, between PSE and Seller with respect to such matters. This Agreement may be amended, changed, modified, or altered by the Parties only by an amendment in writing and signed by the authorized representatives of both Parties. All Appendices and Exhibits attached to or delivered in connection with this Agreement are integral parts of this Agreement as if fully set forth herein.

18.9 Binding Effect.

This Agreement, as it may be amended from time to time pursuant to this Article, shall be binding upon and inure to the benefit of the Parties' respective successors-in-interest, legal representatives, and permitted assigns.

18.10 Headings.

Captions and headings used in the Agreement are for ease of reference only and do not constitute a part of this Agreement.

18.11 Counterparts.

This Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including .pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docuSign.com) or other similar transmission method, and any counterpart so delivered shall be deemed to have been duly and validly executed and delivered and be valid and effective for all purposes.

18.12 Telephone Recording.

Each Party acknowledges and agrees to the taping or electronic recording of conversations between the Parties with respect to all scheduling and dispatch issues, whether by one or the other or both Parties, and that the recordings constitute Confidential Information and will be retained in confidence, secured from improper access, and may be submitted in evidence in any suit, action or proceedings relating to this Agreement. Each Party waives any further notice of that monitoring or recording, and agrees to notify its personnel of the monitoring or recording and to obtain any necessary consent of those personnel.

18.13 Effect of Force Majeure Event.

Neither Party shall be responsible or liable for any delay or failure in its performance under this Agreement due solely to a Force Majeure Event, provided that:

- (a) the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure Event;

- (b) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure Event;
- (c) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure Event; and
- (d) when the non-performing Party is able to resume performance of its obligations under this Agreement, the non-performing Party shall give the other Party written notice to that effect.

If the Force Majeure Event has not been cured within 90 days of its commencement, the Party not claiming the Force Majeure Event may, at any time following the end of such 90-day period, terminate this Agreement upon written notice to the nonperforming Party, without further obligation by the terminating Party except as to costs and balances incurred prior to the effective date of the termination. The Party not claiming the Force Majeure Event may, but shall not be obligated to, extend such 90-day period, for such additional time as it, in its sole discretion, deems appropriate, if the affected Party is exercising due diligence in its efforts to cure the conditions leading to the Force Majeure Event. Notwithstanding the foregoing, upon 30 days' prior written notice to the other Party, the Party not claiming the Force Majeure Event may terminate this Agreement without liability or obligation of either Party to the other (except for such payment obligations that arose prior to the effective date of such termination) if: (a) any single Force Majeure Event lasts more than 180 consecutive days or (b) the cumulative duration of all Force Majeure Events exceeds more than 180 days.

18.14 Ethics and Anticorruption; Policies and Reporting Obligations.

18.14.1. Seller declares that in managing its business activities and its relationships, it adheres to the principles contained in its Code of Ethics, the Zero Tolerance of Corruption Plan and the Organisation & Management Model adopted pursuant to Italian Legislative Decree 231/2001 (the "Compliance Program") (available at <https://www.enel.com/investors/a/2016/08/code-of-ethics>). Moreover, as a subsidiary of Enel S.p.A., Seller declares its adherence to the United Nations Global Compact. Seller wishes its counterparties to refer to the same principles in managing their business activities and relationships. Seller prohibits any promises, offers, or requests of illegal payments, in cash or other benefits, with the objective of gaining an advantage in its relationships with stakeholders, and this prohibition is extended to all of its employees.

18.14.2. Seller will at all times during the Initial Term comply with the terms of PSE's Responsible Supplier and Contractor Guidelines ("Contractor Guidelines"), which is available at <https://www.pse.com/pages/contractors-and-suppliers/responsible-supplier-and-contractor-guidelines> which is incorporated herein and made a part of the Agreement as if fully set forth herein.

18.14.3. Seller will not, and will ensure that its Subcontractors will not, directly or indirectly, offer, promise, authorize or give anything of value to a government official, a political party, a candidate for political office or any other person connected to a government in any way, or authorize the giving of anything of value to a government official, a candidate

for political office, or any other person connected to a government in any way, for the purposes of: (a) influencing an act or decision of that government official (including a decision not to act) in connection with PSE's business or in connection with Seller's business with PSE; or (b) inducing such a person to use his or her influence to affect any government act or decision in connection with PSE's business or in connection with Seller's business with PSE. Supplier further warrants that neither it nor any of its subcontractors have offered or given, or will offer or give, any gifts or gratuities to PSE employees, agents, or representatives for the purpose of securing the Agreement or securing favorable treatment under the Agreement. In addition, Seller will notify PSE immediately if any of its employees, officers, or principals are officials or representatives of any government or are candidates for such government positions. Any breach of this provision by Seller or any of its subcontractors will constitute a material breach of the Agreement and will immediately entitle PSE to terminate this Agreement without liability to PSE.

18.14.4. PSE has entered into the Agreement with Seller based upon PSE's reasonable belief that Seller adheres to the strictest of ethical standards. In connection therewith, Supplier has reviewed PSE's Corporate Ethics and Compliance Code at <http://www.pse.com/aboutpse/CorporateInfo/Pages/Our-Ethics.aspx>.

18.14.5. Labor. It is PSE's preference for Seller to utilize a project labor agreement, community workforce agreement, or collective bargaining agreement for major construction activities associated with the Program that is in a reasonable and customary form.

18.14.6. Certain Reporting Requirements.

- (a) Seller shall furnish no later than May 1 of each Program Year and upon PSE's reasonable request (but in any event not more than twice annually), a report documenting how its performance of the Program is in accordance with the Customer Benefits Plan. "Customer Benefits Plan" must include, but not be limited to:
- Seller's work with PSE to ensure at least 30% of the net energy benefit to customers is applied to named communities and vulnerable populations
 - PSE will work with Seller to identify specific Seller-provided metrics related to this requirement
 - Overview of annual activity
 - Improvements to program made over Program Year
 - Opportunities for improvements of Program performance and suggestions on action items to execute performance
 - Overall customer recruitment rate per Program
 - Overall MW capacity curtailment per season and program as applicable

PSE shall have the right to review and provide feedback (if any) on the report. This report must include at a minimum the application of the labor standards in RCW 82.08.962 and 82.12.962 and compliance with WAC 480-107-075;

local tax revenues generated by the Program; activities undertaken to support development of Program-related opportunities, including opportunities for women-, minority-, disabled-, and veteran-owned businesses; activities associated with facilitating a clean energy workforce, including job training, career awareness, and educational opportunities; charitable donations; and any other non-energy benefits. The report must also describe and document how Seller has implemented commitments made in the Customer Benefit Plan and explain any material variation from those commitments. Such report shall also include the prior years' information.

- (b) The report required under Section 18.14.6(a) also must include, at a minimum, the reporting of metrics associated with the customer benefit indicator "increase in quality and quantity of clean energy jobs" in PSE's 2021 Clean Energy Implementation Plan ("CEIP"). The metrics provided must include, at a minimum, the number of jobs created by the project; the number of local workers; the number of part-time and full-time jobs; the range of wages paid to workers; the extent to which additional benefits are offered; the use of apprenticeship labor; the demographics of workers, and any other relevant metrics or information that relates to the quality or quantity of jobs associated with the project. Indicators and metrics may change based on final approval of PSE's 2021 CEIP and subsequent CEIPs, at which time Purchaser will inform Seller, and Seller shall reasonably cooperate to revise indicators and metrics as necessary.
- (c) In its reporting and updates described above, Seller will use its best efforts to present metrics, benefits and burdens that specifically apply to Highly Impacted Communities and Vulnerable Populations as they are defined in WAC 480-100-605 and according to the criteria in PSE's CEIP. Seller will keep Purchaser informed as these criteria are finalized and further refined, and Purchaser will provide feedback and guidance to Seller on the methodology Seller uses for tracking those metrics, benefits and burdens. For projects located outside of Washington State, Seller will use its best efforts to present metrics, benefits and burdens based on disadvantaged communities defined and identified in the Climate and Economic Justice Screening Tool (CEJST) created by the Council on Environmental Quality as directed by Executive Order 14008 on Tackling the Climate Crises at Home and Abroad.
- (d) **Community Benefits and Equity Targets**
Seller acknowledges and understands that the count and savings goals are under development by PSE. If Seller believes in good faith that any goal identified by PSE in accordance with this Section III.D. is commercially unreasonable, the Parties will meet and discuss upon reasonable notice whether that goal can be revised or adjusted to address Seller's good faith concerns.

18.15 Mobile Sierra. Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to the FERC pursuant to the provisions of the Federal Power Act, absent prior written

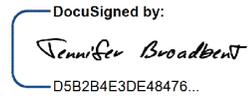
agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party, or the FERC acting sua sponte shall be the “public interest” standard of review set forth in *United States Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) , and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008).

- 18.16 Further Assurances. Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary to carry out the terms hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 11.20.
- 18.17 Good Faith. The Parties shall act in accordance with principles of good faith and fair dealing in the performance of this Agreement.

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IN WITNESS WHEREOF, the authorized representatives of PSE and Seller have executed this Agreement as of the Execution Date.

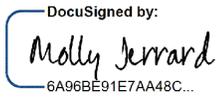
PSE:

By:  DocuSigned by:
Jennifer Broadbent
D5B2B4E3DE48476...

Name: Jennifer Broadbent

Title: 09/26/2023

SELLER: Enel X North America, Inc.

By:  DocuSigned by:
Molly Jerrard
6A96BE91E7AA48C...

Name: Molly Jerrard

Title: Head of Demand Response

EXHIBIT A - FORM OF NOTICE TO ADD PARTICIPATING FACILITY

**Enel X - PSE Demand Response Program Notice to
Add or Participating Facility**

___/___/20__

Program Identification	Site Name	Estimated Capacity	Ready to Respond Date	Action
ABC2596	Wholesale Distribution		___/___/20__	Add
ABC 2599	ABC Manufacturing		___/___/20__	Add
ABC 2643	Grocery Sales, Inc.		___/___/20__	Add
ABC 2645	ACME Co.		___/___/20__	Add

Enel X Notice to Add
Confidential Information - Do Not Distribute
Generated By:
Enel X North America, Inc.

EXHIBIT B -FORM OF NOTICE TO REMOVE PARTICIPATING FACILITY

Enel X - PSE Demand Response Program *Notice to Remove Participating Facility*

 / /20

Program Identification	Site Name	Ready to Respond Date	Action
ABC 2596	Wholesale Distribution	<u> </u> / <u> </u> /20 <u> </u>	Remove
ABC 2599	ABC Manufacturing	<u> </u> / <u> </u> /20 <u> </u>	Remove
ABC 2643	Grocery Sales, Inc.	<u> </u> / <u> </u> /20 <u> </u>	Remove
ABC 2645	ACME Co.	<u> </u> / <u> </u> /20 <u> </u>	Remove

Enel X Notice to Remove
Confidential Information - Do Not Distribute
Generated By:
Enel X North America, Inc.

EXHIBIT C — MARKETING, RECRUITMENT AND RETENTION

1.0 Scope of Work. Seller will perform all marketing, recruitment and retention activities required to solicit Eligible Facilities and retain Participating Facilities for the Program. Activities include the development of a jointly developed marketing plan (a “Marketing Plan”), enrollment and education materials and periodic communications to minimize abandonment of Participating Facilities. In addition to PSE’s right to review and approve Marketing Materials under Section 6.1, PSE will be provided reasonable opportunity to review all Program marketing and recruitment activities. A minimum of 1 joint marketing strategy evaluation session is required.

The table below outlines the main roles and responsibilities of each Party as it relates to the marketing efforts for the Program.

Marketing Tasks for Seller Dispatchable Commercial and Industrial (C&I) Demand Response Program		Responsible	Consulted
Overall Program Marketing/Comms Plan		Seller	PSE
PSE Web Site	Draft content	Seller	PSE
	Layout	PSE	
	Hosting & maintenance	PSE	
Printed Materials	Draft content	Seller	PSE
	Layout	PSE	
	Printing	PSE	
Outreach Events (not including customer meetings or ordinary business communications)	Identification	Seller and PSE	
	Scheduling	Seller and PSE	
	Facilitator	PSE	

2.0 Marketing Plan. Seller shall be primarily responsible for developing the Marketing Plan. Seller shall incorporate PSE’s comments into developing the Marketing Plan. PSE will have final approval of the Marketing Plan, which approval shall not be unreasonably withheld, conditioned or delayed. The Marketing Plan will include:

- 2.1 Identifying and quantifying the target market;
- 2.2 Developing a communications plan to reach the target market;
- 2.3 Developing the concept for marketing collateral;
- 2.4 Strategy;

- 2.5 Outline of tactics;
- 2.6 Timeline for implementation; and
- 2.7 Outline of messages

3.0 Party Responsibilities:

3.1 Staffing. Seller shall assign dedicated Project management staff to design, develop and distribute all enrollment materials including enrollment operations; education packages and other activities. Project management staff shall provide the following support activities:

- Coordination and planning;
- Prepare weekly and ad-hoc as needed status reports;
- Attend weekly and ad-hoc as needed implementation meetings, by phone and on-site; and
- Attend meetings when requested by PSE.

3.2 Marketing Designs. Seller will design branded Program content in accordance with PSE standards and policies and subject to PSE approval (which shall not be unreasonably withheld, except with respect to Marketing Materials under Section 6.1) prior to any distribution, publication or dissemination of such material to the public or any third parties. The detailed activities for this by each Party shall include:

Seller activities:

- Develop “Request for follow-up” leave-behind materials;
- Develop letter and fact sheet text;
- Develop layout for customer education package;
- Deliver collateral and materials to customers;
- Develop phone script and “Frequently Asked Questions” for customer contact personnel; and
- Distribute final materials to Seller and PSE representatives.

PSE activities:

- Develop and approve final layout
- Print collateral materials

3.3 Customer Education. Seller shall provide program introduction materials to Participating Customers. The package shall include information that describes how the specific features of the Program will work.

3.4 Marketing Campaign. Seller shall be responsible for all costs associated with

development, mailing and distribution of marketing material and any associated media costs. In addition to direct mail and email, Seller shall be responsible for outreach to organizations such as trade associations and Chambers of Commerce. Seller shall send list of proposed contacts to PSE to review for any existing relationships prior to Seller reaching out to them. Seller shall send this list to the PSE program manager. For earned media engagement and advertising through local publications, Seller shall send list of proposed contacts to PSE Marketing for review prior to outreach. Either Party may identify appropriate marketing outreach events that can be leveraged to increase customer enrollment. When events are identified, PSE shall be given the opportunity to schedule and facilitate the event to maintain a presence with its customers. The cost of the events shall be incurred by the Party that initiates the request to have an outreach event.

Co-branding activities will depend on how PSE and Seller coordinate customer outreach; however, the following co-branding terms will apply if deemed appropriate by PSE in its sole discretion:

- Vendor Identification: Vendors will be provided PSE contractor badges. When interacting with PSE customers, these badges must be prominently displayed at all times.
- Business Cards: Contractor business cards must meet PSE contractor corporate standards.
- Clothing: PSE logo shall be prominently displayed on clothing worn at PSE customer sites.
- Vehicles: Vehicles driven by vendors to PSE customer sites must have PSE logo prominently displayed along with the vendor's logo or company name.
- Customer Displays/Events: Customer displays, event materials and marketing collateral shall have PSE logos and other PSE identifiers located on all material (table top displays, canopies, trade show displays, handouts, etc.).

- 3.5 Website. Seller shall provide content for use on PSE's demand response webpage. PSE shall be responsible for website layout and ongoing hosting and maintenance of the site and information on the webpage.
- 3.6 Participating Customer Enrollment Form. Seller shall be responsible for obtaining signed Notices to Add Participating Facility to be included in the Program system database. Seller will forward original signed Notices to Add Participating Facility to PSE.
- 3.7 Customer Complaints. Seller will provide same day customer contact to respond to Customers relating to (as applicable) (i) the quality of any equipment sold, (ii) the quality of the installation service, (iii) the Customer's satisfaction with the services or with the equipment provided or (iv) scheduling repairs to the equipment installed by Seller. Seller also shall develop and implement a process for the management and resolution of customer complaints in an expedited manner including: (a) ensuring adequate levels of professional customer service staff; (b) direct access of

customer complaints to supervisory and/or management personnel; (c) documenting each customer complaint upon receipt; and (d) elevating any complaint that is not resolved within 5 Business Days of receipt to PSE. Seller will provide in a secure manner a detailed log and copies of all customer complaints to PSE no later than 7 days after the end of each calendar month during the Term, provided that Seller also will provide such log and copies promptly and in a secure manner at any time upon request by PSE. The customer complaint log and copies only will be used for the purpose of performing under the Agreement and will be protected as Confidential Information.

- 3.8 Customer Contact Log. In addition to the requirements set forth in Section 3.7, Seller is responsible for maintaining an electronic customer contact log of customers interested in participating in the Program and results from the inquiries. The customer contact log shall include customer name, facility address, contact name and phone number and customer feedback. Such log only will be used for the purpose of performing under the Agreement and will be protected as Confidential Information. Seller also will provide such log promptly and in a secure manner at any time upon request by PSE.
- 3.9 Cross-cultural and Multilingual Customer Experience. All customer-facing materials and communications in languages other than English should be transcreated (not simply translated), to authentically represent the voices and experience of the customers PSE serves. Transcreation reinforces PSE's principles on providing equitable program access for all customers, in a manner that reflects the diverse communities in PSE's service area. Multiple languages may be represented as dominant, and this should be represented in program communications.

EXHIBIT D — FORM OF CUSTOMER CONSENT TO DISCLOSURE

Customer Authorization to Release Information

Account Holder/Customer of Record Information:

Customer Name: _____ PSE Account No: _____
Service Address: _____ City: _____
Home Phone #: () Account Password: _____ (If applicable)

I (the PSE account holder/customer of record) authorize PSE to release the information specified below to the authorized person listed on this form. I understand a separate form is needed for each PSE electric service account and each authorized person, if applicable.

Please check the appropriate box:

This authorization to release information to the authorized person listed below shall remain in effect until I close the PSE account *or* cancel this authorization in writing.

This is a one-time authorization for PSE to release the specified information to the authorized person listed below.

Authorized Person Information:

Name: _____ Phone #: () _____
E-mail Address: _____
Mailing Address: _____

Please provide a Usage History Letter to the authorized person.

Signature of Account Holder/Customer of Record (required)

Date (required)

Please return the completed and signed form to:

**Shaded information is designated as
CONFIDENTIAL per WAC 480-07-160**

EXHIBIT E — NOTICES

Enel X North America, Inc.



Puget Sound Energy, Inc.
355 110th Ave NE
Bellevue, WA 98004
Attention: General Counsel

EXHIBIT G — FORM OF LETTER OF CREDIT

[LETTERHEAD]

[Date]

Irrevocable Standby Letter of Credit No.

Beneficiary:

Puget Sound Energy, Inc.
10885 NE 4th Street
Bellevue, WA 98004-5591

Attn: [Name]
[Title]
[Phone]
[] (fax)

Applicant:

[•] on behalf of [] LLC
[•]
Attn: Credit Department

Dear Madam or Sir:

We hereby establish for the account of [] LLC (the “Account Party”), our irrevocable standby letter of credit in your favor for an amount of USD \$[] ([*Amt in words*] Dollars United States currency) (the “Available Amount”). Account Party has advised us that this letter of credit is issued in connection with the [], dated as of [], 20[] between Account Party and Beneficiary (as amended and as may be further amended, supplemented or otherwise modified). This letter of credit shall (i) become effective immediately for the term of one (1) year and shall expire on [] (the “Expiration Date”), and (ii) is subject to the following:

1. Funds under this letter of credit shall be made available to Beneficiary against its draft drawn on us in the form of Annex 1 hereto, accompanied by (a) a certificate in the form of Annex 2 hereto, appropriately completed and signed by an authorized officer of Beneficiary, dated the date of presentation and (b) the original of the letter of credit and all amendments (or photocopy of the original for partial drawings) and presented at our office located at [], attention [] (or at any other office which may be designated by us by written notice delivered to you). A presentation under this letter of credit may be made only on a day, and during hours, in which such office is open for business (a “Business Day”). If we receive your presentation at such office on any Business Day, all in conformity with the terms and conditions of this letter of credit, we will unconditionally honor the same by making payment in accordance with your payment instructions on or before the third succeeding Business Day after such presentation. Partial and multiple drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect

with respect to any continuing balance; *provided* that the Available Amount shall be reduced by the amount of each such drawing.

2. This letter of credit shall terminate upon the earliest to occur of (i) our receipt of a notice in the form of Annex 3 hereto signed by an authorized officer of Beneficiary, accompanied by this letter of credit for cancellation, (ii) our close of business at our aforesaid office on the Expiration Date, or if the Expiration Date is not a Business Day, then on the preceding Business Day. This letter of credit shall be surrendered to us by you upon the earlier of presentation or expiration.

3. It is a condition of the letter of credit that it shall be deemed to be automatically extended without amendment for additional one-year periods until [] (the “Final Expiration Date”), unless at least sixty (60) days prior to the Expiration Date we send you notice by registered mail, return receipt requested or courier service or hand delivery at the above address that we hereby elect not to consider this letter of credit extended for such additional period.

4. This letter of credit shall be governed by, and construed in accordance with, the terms of the International Standby Practices, ISP 98, International Chamber of Commerce Publication No. 590 (the “ISP”), to the extent that such terms are not inconsistent with this letter of credit. As to matters not governed by the ISP, this letter of credit shall be governed by, and construed in accordance with, the laws of the State of New York, including, without limitation, the Uniform Commercial Code as in effect in the State of New York.

5. This letter of credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except for Annexes 1, 2 and 3 hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as otherwise provided in this paragraph 6.

6. Communications with respect to this letter of credit shall be in writing and shall be addressed to us at the address referred to in paragraph 1 above, and shall specifically refer to this letter of credit no. _____.

Very truly yours,

[LOC Issuer]

Authorized signature

ANNEX 1

TO LETTER OF CREDIT NO. _____

Draft under Letter of Credit No. _____

[*Month, Day, Year*]

On [*third business day next succeeding date of presentation*]

Pay to [] U.S. \$ _____ [not to exceed the Available Amount]

[Address 1]

[Address 2]

[*insert any wire instructions*]

For value received and charge to account of Letter of Credit No. _____ .

By: _____

Title: _____

ANNEX 2

TO LETTER OF CREDIT NO. _____

Drawing under Letter of Credit No. _____

The undersigned, a duly authorized officer of [_____], a [_____] located in [_____], (“Beneficiary”), hereby certifies on behalf of Beneficiary with reference to irrevocable standby Letter of Credit No. _____ (the “Letter of Credit”) issued for the account of [_____], that:

- 1) [pursuant to that certain [*agreement*] between Beneficiary and [*account party*] dated as of [_____], an Event of Default as defined in said Agreement has occurred and as a result, the Beneficiary is entitled to payment of an amount equal to _____ Dollars (\$_) from this Letter of Credit;]

--or--

[(i) Beneficiary has received notice from the Issuing Bank pursuant to Section 3 of the Letter of Credit, and (ii) the Letter of Credit will expire in fewer than thirty (30) Days from the date hereof. As such, as of the date hereof Beneficiary is entitled to draw under the Letter of Credit as specified in the accompanying sight draft.]

- 2) by presenting this certificate and the accompanying sight draft, Beneficiary is requesting that payment in the amount of \$_____, as specified on said draft, be made under the Letter of Credit by wire transfer or deposit of funds into the account specified on said draft;
- 3) the amount specified on the sight draft accompanying this certificate does not exceed the Available Amount to which Beneficiary is entitled to draft under said [*agreement*] as of the date hereof.

In witness whereof, Beneficiary has caused this certificate to be duly executed and delivered by its duly authorized officer as of the date and year written below.

Date: _____

By: _____

Title: _____

ANNEX 3

TO LETTER OF CREDIT NO. _____

Notice of surrender of Letter of Credit No. _____

Date: _____

Attention: Letter of Credit Department

Re: Letter of Credit No. _____ issued for the account of [*account party*]

Ladies and Gentlemen:

We refer to your above-mentioned irrevocable standby Letter of Credit (the “Letter of Credit”). The undersigned hereby surrenders the Letter of Credit to you for cancellation as of the date hereof. No payment is demanded of you under this Letter of Credit in connection with this surrender.

Very truly yours,

By: _____

Title: _____

PRODUCT ATTACHMENT 1

Peak Demand Product Attachment

1. **Product Summary.** This Attachment covers the “Peak Demand Product” to be provided in accordance with this Attachment and the Agreement, which has the following characteristics:
 - a. Product Days: Business Days
 - b. Product Events: Product Events and Product Test Events
 - c. Product Hours: 6:00 a.m. to 10:00 p.m. Pacific Time on Product Days
 - d. Settlement Interval: 15 minute
 - e. Product Period: Monthly from November 1st to October 31st
 - f. Dual Product Participation: Participating Facilities in the Peak Demand Product are eligible to participate concurrently in the Emergency Product.
2. **Product Terms.** Unless explicitly specified otherwise, the terms and conditions of this Attachment apply only to the “Peak Demand Product” and not any other Product.
3. **Term.** This Product Attachment and Seller’s obligation to provide PSE with the Peak Demand Product shall commence on Execution Date of the Agreement and continue until the expiration of the Term, unless earlier terminated as may be permitted herein or by the Agreement.
4. **Product Participating Facilities.**
 - a. Only those Eligible Facilities designated by Seller through the delivery by Seller, and receipt by PSE, of a completed Notice to Add Participating Facility shall be deemed a Participating Facility for purposes of the Peak Demand Product. An "Eligible Facility" for the Peak Demand Product is a building or facility located in PSE’s electric service territory that:
 - i. Has an Interval Meter installed;
 - ii. Receives retail electric service from PSE under a PSE account specific to that building or facility; and
 - iii. The Company customer of record for which has executed and delivered a Customer Consent to Disclosure, and entered into a fully-executed Participating Customer Contract

If the Participating Facility's electrical service is terminated or disconnected by PSE for any reason, or the Participating Facility ceases to be an Eligible Facility, then it shall automatically cease being a Participating Facility as of the date of such termination, disconnection, or ineligibility. Furthermore, promptly following PSE’s request, Seller will use reasonable efforts to remove a Participating Facility if, in PSE’s reasonable judgment, the Participating Customer associated with that Participating Facility is not participating in the Product in good faith. To remove a building or facility as a Participating Facility, Seller must deliver to PSE a completed Notice to Remove Participating Facility. Except as set forth in this

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paragraph, no Participating Facility will be deemed removed unless and until PSE has received such Notice to Remove Participating Facility.

5. Product Events; Product Test Events

a. Availability.

PSE may dispatch Product Events at any time during Product Hours pursuant to Section 5(b) below, and subject to Section 5(c) with respect to Product Test Events. No more than 2 Product Events may be dispatched per Product Day. No more than 8 Product Events may be dispatched between November 1st and April 30th and no more than 8 Product Events may be dispatched between May 1st and October 31st. Product Events shall expire upon the earlier of (i) notification by PSE pursuant to Section 5(b), or (ii) the expiration of such 4-hour period, as the case may be.

b. Notification.

PSE shall notify Seller of Product Events by issuing a dispatch within PSE's distributed energy resources management system, currently provided by AutoGrid, to which Seller has integrated its demand response management system. PSE will also have the ability to notify Seller of Product Events by, using Seller's utility dispatch portal, to which authorized PSE personnel will have access throughout the Initial Term of this Agreement, by sending an electronic mail to the following electronic mail address (or such other electronic mail address as may be notified by Seller pursuant to [REDACTED] [REDACTED] [REDACTED] [REDACTED]).

Issuing a dispatch for a Product Event must specify that such Product Event will begin and end on a 15 minute clock interval, provided that such Settlement Interval is at least 120 minutes after the time at which such dispatch is issued.

By Friday preceding each calendar week in each Program Year, PSE will provide Seller with information on dispatch likelihood for each Product Day of the following calendar week using data such as load and pricing forecasts, which would help to indicate a need or lack thereof to dispatch a Product Event. If, during a given calendar week, new data changes the likelihood that PSE will dispatch a Product Event on a given Product Day in that calendar week, PSE will make commercially reasonable efforts to inform Seller of such changes. Seller will use such information to help Participating Customers plan their weekly operations and prepare for potential Product Events. None of the information provided by PSE or used by Seller for customer communications limits or alters PSE's ability to dispatch Product Events as defined throughout this Agreement.

c. Product Test Events.

PSE shall have the right to dispatch one Product Test Event between November 1st and April 30th of each Program Year if a Product Event has not been dispatched by February 15th of the given Program Year, provided that in Program Year 1, PSE may dispatch one Product Test Event at anytime between November 1st and April 30th. PSE shall have the right to dispatch one Product Test Event between May 1st

and October 31st of each Program Year if a Product Event has not been dispatched after May 1st and before August 15th of the given Program Year, provided that in Program Year 1, PSE may dispatch one Product Test Event at anytime between May 1st and October 31st. If a Participating Facility performs at less than 75% of their expected MW level in a Product Test Event, PSE may dispatch another Product Test Event for those participating facilities within 30 Business Days of the original Product Test Event, but not sooner than 10 Business Days following the original Product Test Event. Product Test Events do not count towards the 8 Product Event maximums detailed in Section 5a. Except as otherwise provided herein, Product Test Events shall be treated as other Product Events for purposes of this Agreement and shall be subject to the same payments, requirements, limitations, and restrictions to which other Product Events are subject (including those set forth above in this Section 5).

d. Event Reporting.

Seller shall provide PSE with written reports of Product Event performance as follows:

- i. Initial Product Event performance reporting within 3 Business Days following a Product Event, which will include estimated Product Event performance based on available data and Participating Facility information including electric energy usage data from Participating Facilities enabled with Seller Equipment for electrical energy usage monitoring and Participating Facilities' responses to Product Event notifications; and
- ii. Final Product Event performance reporting within 10 Business Days of receipt of electric energy usage data from PSE for each Participating Facility; and
- iii. Cumulative Product Event performance reporting within 30 days following the end of each Capacity Delivery Month applicable to this Product for all Product Events within a given Capacity Delivery Month provided that such timeline is contingent upon PSE's ability to provide electric energy usage data to Seller for each Participating Facility upon request, but no later than 10 Business Days following Seller's request.

6. PRODUCT PRICING

From and after the Service Commencement Date until the expiration or earlier termination of the Term, PSE shall pay a capacity payment in respect of each Capacity Delivery Month during the Term ("Monthly Capacity Payment") in the amount of the following:

- i. If there were no Product Events within the Capacity Delivery Month, the average Committed Load Reduction in effect during each hour of the Product Month for this Product, multiplied by the Capacity Payment Rate below, or

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- ii. if there were Product Events within a given month, the average Product Committed Load Reduction in effect during each hour during the Product Month for this Product, multiplied by the Capacity Payment Rate below, multiplied by the Load Reduction Performance Factor for this Product.

The Capacity Payment Rate is per MW per month during the Product Period for this Product is:

November	December	January	February	March	April	May	June	July	August	September	October
----------	----------	---------	----------	-------	-------	-----	------	------	--------	-----------	---------

Notwithstanding anything contained in this Section 6 to the contrary, in no event shall PSE be required to pay a Monthly Capacity Payment to Seller during, and in respect of any period that a Seller Event of Default has occurred and remains uncured or any period in which, as the result of a Force Majeure Event, Seller is rendered unable to perform.

7. PROJECT PERFORMANCE

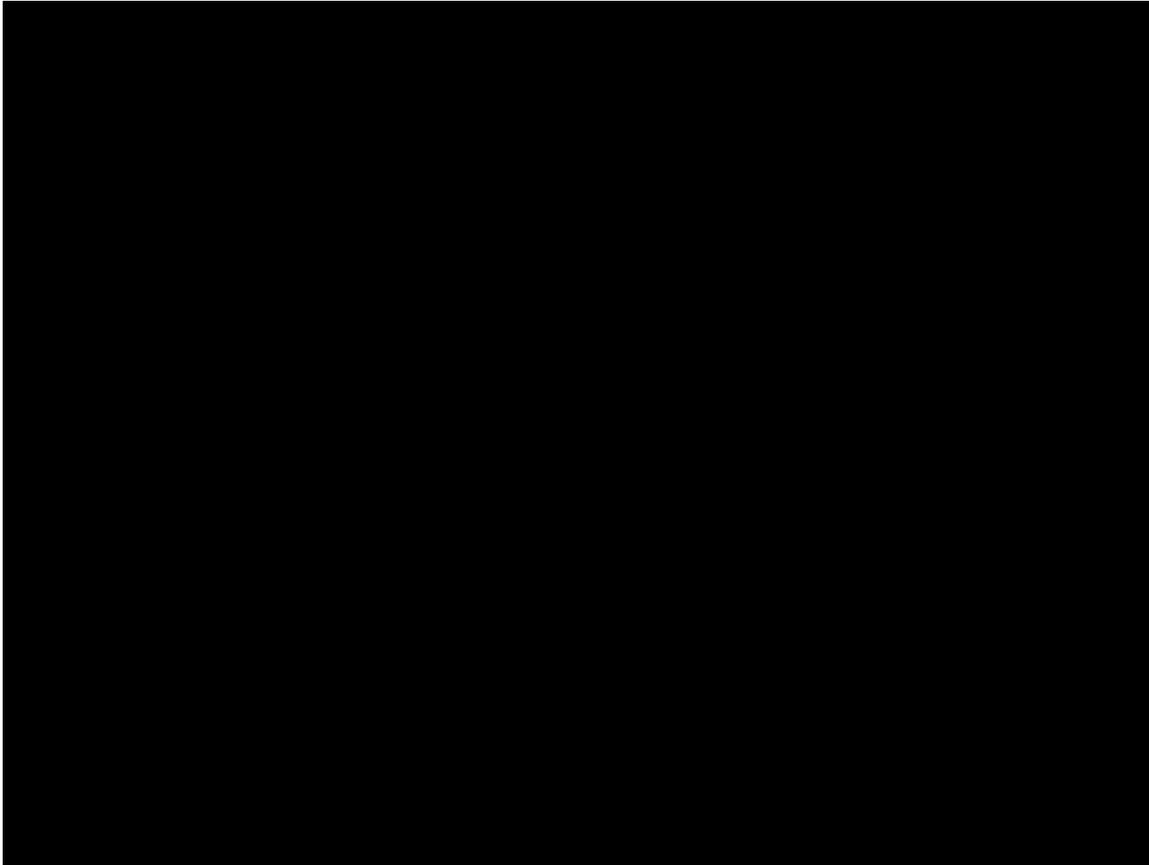
- a. Load Reduction Performance Factor

- b. Baseline Performance Level.

For each Participating Facility, the "Unadjusted Baseline" for each Settlement Interval shall be the average of the Participating Facility's measured electric energy usage, in kW, during the same Settlement Interval in each of the Baseline Measurement Days (as defined below).

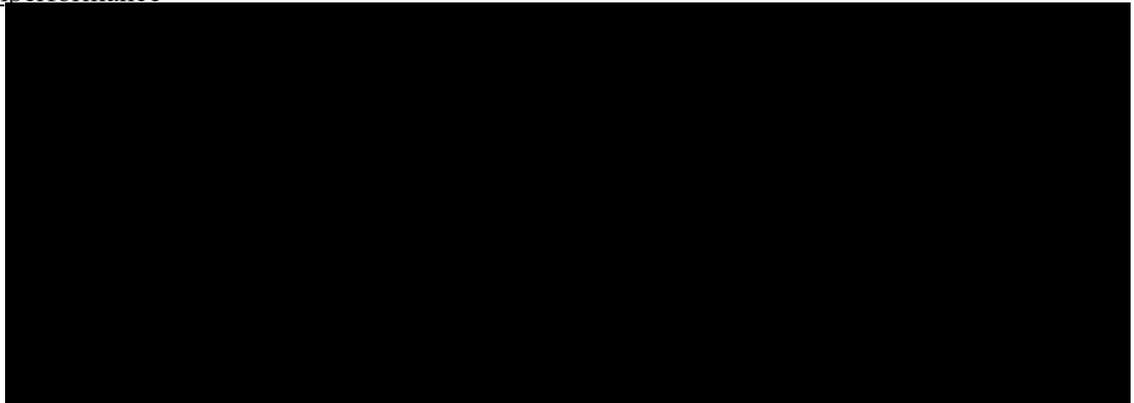
the "Baseline Measurement Days" are the four days within the immediately preceding 5 Business Days in which no Product Event (for any Product) has occurred, in which the Participating Facility had the highest average kilowatt (kW) usage (highest electric energy usage in kWh) between the hours of 6:00 a.m. and 10:00 p.m. Pacific Standard Time.

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c. Nonperformance

i.



- ii. If Seller fails to deliver more than 80% of the average Committed Load Reduction for this Product during any Product Event or Product Test Event (each, a “Performance Deficiency”) on 2 or more separate occasions in any six month period during the Term, then PSE may, without liability to PSE and no later than 30 days after the end of the Program Period in which such Performance Deficiency occurred, terminate this Product Attachment effective immediately upon delivery of written notice to Seller. If PSE fails to terminate this Product Attachment during such 30-day period, this Product Attachment shall remain in full force and effect and PSE shall be deemed to have waived its right to terminate this Product Attachment with respect to the 2 Performance Deficiencies in question. Notwithstanding the foregoing, any such

deemed waiver shall not affect PSE's right to terminate this Product Attachment as a result of additional Performance Deficiencies and all such Performance Deficiencies shall be counted towards determining PSE's right to terminate this Product Attachment, even those Performance Deficiencies that were previously included in determining a right to terminate that was waived or deemed waived by PSE. As an example, if a Performance Deficiency occurred on each of June 15, 2024, June 30, 2024 and July 1, 2024, if PSE did not terminate this Product Attachment by August 1, 2024 and on August 15, 2024 a subsequent Performance Deficiency occurred, PSE would again have a right to terminate this Product Attachment in accordance with this Section.

PRODUCT ATTACHMENT 2

Emergency Product Attachment

1. **Product Summary.** This Attachment covers the “Emergency Product” to be provided in accordance with this Attachment and the Agreement, which has the following characteristics:
 - a. Product Days: Business Days
 - b. Product Events: Product Events and Product Test Events
 - c. Product Hours: 6:00 a.m. to 10:00 p.m. Pacific Time on Product Days
 - d. Settlement Interval: 15 minute
 - e. Product Period: Monthly from November 1st to October 31st
 - f. Emergency Dispatch Condition: a condition or situation, as determined by PSE in its sole discretion and in a non-discriminatory manner, that is imminently likely to: (1) endanger life or property; (2) cause a material adverse effect on the security of, or damage to PSE’s electric system or the electric systems of others to which PSE’s electric system is directly connected; or (3) cause the failure of transmission or distribution facilities or generation supply that could adversely affect reliability or meeting expected load obligations. A North American Electric Reliability Corporation Energy Emergency Alert of level 2 (EEA 2) or higher, system restoration and black start shall be considered Emergency Dispatch Conditions.
 - g. Dual Product Participation: Participating Facilities in the Emergency Product are eligible to participate concurrently in the Peak Demand Product.
2. **Product Terms.** Unless explicitly specified otherwise, the terms and conditions of this Attachment apply only to the “Emergency Product” and not any other Product.
3. **Term.** This Attachment and Seller’s obligation to provide Emergency Products shall commence on the Execution Date of the Agreement and continue until the expiration of the Term, unless earlier terminated as may be permitted herein.
4. **Product Participating Facilities.**
 - a. Only those Eligible Facilities designated by Seller through the delivery by Seller, and receipt by PSE, of a completed Notice to Add Participating Facility shall be deemed a Participating Facility for purposes of the Emergency Product. An "Eligible Facility" for the Emergency Product is a building or facility located in PSE's electric service territory that:
 - i. Has an Interval Meter installed;
 - ii. Receives retail electric service from PSE under a PSE account specific to that building or facility; and
 - iii. The PSE customer of record for which has executed and delivered a Customer Consent to Disclosure, and entered into a fully-executed Participating Customer Contract

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If the Participating Facility's electrical service is terminated or disconnected by PSE for any reason, or the Participating Facility ceases to be an Eligible Facility, then it shall automatically cease being a Participating Facility as of the date of such termination, disconnection, or ineligibility. Furthermore, promptly following PSE's request, Seller will use reasonable efforts to remove a Participating Facility if, in PSE's reasonable judgment, the Participating Customer associated with that Participating Facility is not participating in the Product in good faith. To remove a building or facility as a Participating Facility, Seller must deliver to PSE a completed Notice to Remove Participating Facility. Except as set forth in this paragraph, no Participating Facility will be deemed removed unless and until PSE has received such Notice to Remove Participating Facility.

5. Product Events; Product Test Events

a. Availability.

PSE may dispatch Product Events during Product Hours when an Emergency Dispatch Condition has been met and pursuant to Section 5(b) below. PSE may dispatch Product Test Events in accordance with Section 5(c) below. No more than 1 Product Event may be dispatched per Product Day. No more than 12 Product Events may be dispatched each Program Year. Product Events shall expire upon the earlier of (i) notification by PSE pursuant to Section 5(b), or (ii) the expiration of such 4-hour period, as the case may be.

b. Notification.

PSE shall notify Seller of Program Events by issuing a dispatch within PSE's distributed energy resources management system, currently provided by AutoGrid, to which Seller has integrated its demand response management system. PSE will also have the ability to notify Seller of Program Events by, using Seller's utility dispatch portal, to which authorized PSE personnel will have access throughout the Initial Term of this Agreement, by sending an electronic mail to the following electronic mail address (or such other electronic mail address as may be notified by Seller pursuant to [REDACTED] [REDACTED] [REDACTED] [REDACTED]).

Issuing a dispatch for a Product Event must specify that such Product Event will begin and end on a 15 minute clock interval, provided that such Settlement Interval is at least 60 minutes after the time at which such dispatch is issued.

PSE will use commercially reasonable efforts to notify Seller when the likelihood of a Product Event in the following Product week is higher than normal. If, during a given Product Week, new data changes the likelihood that PSE will dispatch a Product Event on a given Product Day, PSE will make commercially reasonable efforts to inform Seller of such changes. Seller will use such information to help Participating Customers plan their operations and prepare for potential Product Events. None of the information provided by PSE or used by Seller for customer communications limits or alters PSE's ability to dispatch Product Events as defined throughout this Agreement.

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c. Product Test Events.

PSE shall have the right to dispatch one Product Test Event every six months from November 1st, 2023, but such Product Test Events must not be less than 3 months following the most recent Product Event. If a Participating Facility performs at less than 75% of their expected MW level in a Product Test Event, PSE may dispatch another Product Test Event for those participating facilities within 30 Business Days of the original Product Test Event, but not sooner than 10 Business Days following the original Product Test Event. Product Test Events do not count towards the 12 Product Event maximums detailed in Section 5a. Except as otherwise provided herein, Product Test Events shall be treated as other Product Events for purposes of this Agreement and shall be subject to the same payments, requirements, limitations, and restrictions to which other Product Events are subject (including those set forth above in this Section 5).

d. Event Reporting.

Seller shall provide PSE with written reports of Product Event performance as follows:

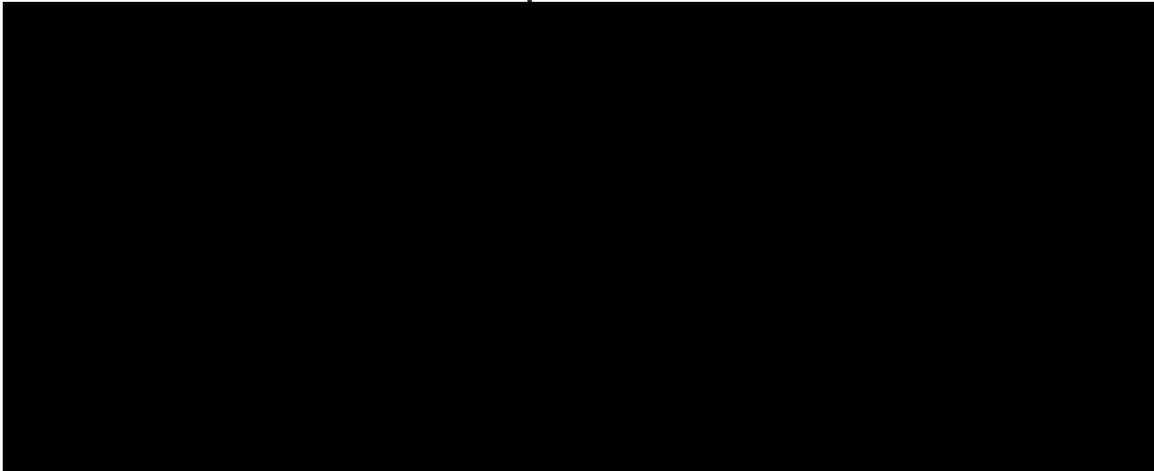
- i. Initial Product Event performance reporting within 3 Business Days following a Product Event, which will include estimated Product Event performance based on available data and Participating Facility information including electric energy usage data from Participating Facilities enabled with Seller Equipment for electrical energy usage monitoring and Participating Facilities' responses to Product Event notifications; and
- ii. Final Product Event performance reporting within 10 Business Days of receipt of electric energy usage data from PSE for each Participating Facility; and
- iii. Cumulative Product Event performance reporting within 30 days following the end of each Capacity Delivery Month applicable to this Product for all Product Events within a given Product Capacity Delivery Month provided that such timeline is contingent upon PSE's ability to provide electric energy usage data to Seller for each Participating Facility upon request, but no later than 10 Business Days following Seller's request.

6. PRODUCT PRICING

From and after the Service Commencement Date until the expiration or earlier termination of the Term, PSE shall pay a capacity payment in respect of each Capacity Delivery Month during the Term ("Monthly Capacity Payment") in the amount of the following:



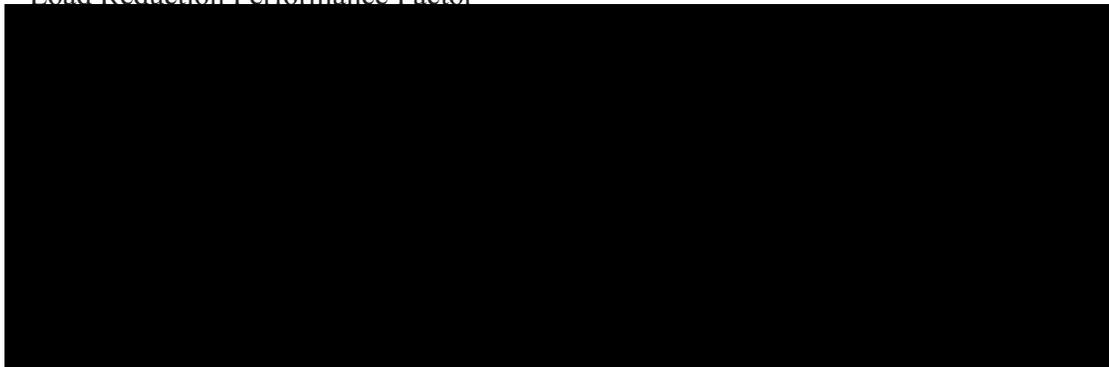
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Notwithstanding anything contained in this Section 6 to the contrary, in no event shall PSE be required to pay a Monthly Capacity Payment to Seller during, and in respect of any period that a Seller Event of Default has occurred and remains uncured any period in which, as the result of a Force Majeure Event, Seller is rendered unable to perform.

7. PROJECT PERFORMANCE

a. Load Reduction Performance Factor



b. Baseline Performance Level.

For each Participating Facility, the "Facility Baseline Usage" for each Settlement Interval shall be the average of the Participating Facility's measured electric energy usage, in kW, during the same Settlement Interval in each of the Baseline Measurement Days (as defined below).

the "Baseline Measurement Days" are the 5 days within the immediately preceding 10 days in which no Product Event (for any Product) has occurred, in which the Participating Facility had the highest average kilowatt (kW) usage (highest electric energy usage in kWh) between the hours of 6:00 a.m. and 10:00 p.m. Pacific Standard Time.

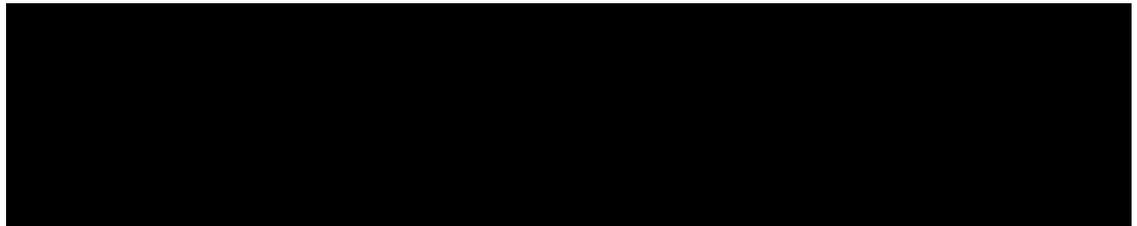
c. Nonperformance.

**Shaded information is designated as
CONFIDENTIAL per WAC 480-07-160**

i.



iii.



If PSE fails to terminate this Product Attachment during such 30-day period, this Product Attachment shall remain in full force and effect and PSE shall be deemed to have waived its right to terminate this Product Attachment with respect to the 2 Performance Deficiencies in question. Notwithstanding the foregoing, any such deemed waiver shall not affect PSE's right to terminate this Product Attachment as a result of additional Performance Deficiencies and all such Performance Deficiencies shall be counted towards determining PSE's right to terminate this Product Attachment, even those Performance Deficiencies that were previously included in determining a right to terminate that was waived or deemed waived by PSE. As an example, if a Performance Deficiency occurred on each of June 15, 2024, June 30, 2024 and July 1, 2024, if PSE did not terminate this Product Attachment by August 1, 2024 and on August 15, 2024 a subsequent Performance Deficiency occurred, PSE would again have a right to terminate this Product Attachment in accordance with this Section.

Certificate Of Completion

Envelope Id: 9598D09BD0234DE5B4161A9B6CD8B467	Status: Completed	
Subject: CW2276207 - C4W - Enel X CW2276207 - Demand Response Agreement (FINAL 9-26-2023).docx		
Source Envelope:		
Document Pages: 67	Signatures: 2	Envelope Originator:
Certificate Pages: 5	Initials: 0	Jennifer Broadbent
AutoNav: Enabled		10885 NE 4th St
Envelopeld Stamping: Enabled		Ste 1200
Time Zone: (UTC-08:00) Pacific Time (US & Canada)		Bellevue, WA 98004
		jennifer.broadbent@pse.com
		IP Address: 34.71.29.60

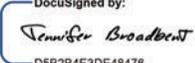
Record Tracking

Status: Original 9/26/2023 4:49:09 PM	Holder: Jennifer Broadbent jennifer.broadbent@pse.com	Location: DocuSign
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Signer Events

Jennifer Broadbent
jennifer.broadbent@pse.com
Consulting Contract Manager
Puget Sound Energy, Inc.
Security Level: Email, Account Authentication (None)

Signature

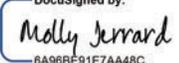
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Signature Adoption: Pre-selected Style
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Molly Jerrard
molly.jerrard@enel.com
Head of Demand Response
Enel X North America, Inc.
Security Level: Email, Account Authentication (None)

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Sent: 9/26/2023 4:57:17 PM
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Signed: 9/27/2023 12:46:53 AM

Electronic Record and Signature Disclosure:
Accepted: 9/27/2023 12:46:18 AM
ID: 18bde0ba-292e-4956-b634-9b79a9f25e1d

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	9/26/2023 4:53:40 PM
Certified Delivered	Security Checked	9/27/2023 12:46:18 AM

Envelope Summary Events	Status	Timestamps
Signing Complete	Security Checked	9/27/2023 12:46:53 AM
Completed	Security Checked	9/27/2023 12:46:53 AM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure

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Required hardware and software

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"> •Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

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